

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORGE L PESINA
Claimant

OFC
Employer

APPEAL 20A-UI-15381-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4R)

Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from the November 16, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 22, 2021, at 3:00 p.m. Claimant did not participate. Employer participated through Richard Hammond, Controller. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is totally, partially or temporarily unemployed.
Whether claimant is able to and available for work.
Whether claimant is still employed at the same hours and wages.
Whether employer's account is subject to charge.
Whether claimant was overpaid benefits.
Whether claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Driver from January 3, 2020 until his employment with OFC ended on October 9, 2020, when claimant quit to accept other employment. Claimant filed an initial claim for benefits effective March 22, 2020. Claimant's weekly benefit amount is \$445.00. Claimant's hourly rate of pay was \$15.25.

Between March 22, 2020 and October 9, 2020, there were a several weeks during which claimant worked less than full-time hours.

For the week ending March 28, 2020, claimant performed no work for employer. Claimant's son tested positive for Covid-19; therefore, employer would not allow claimant to work for safety reasons.

For the week ending May 16, 2020, claimant worked 15.15 hours due to lack of work as a result of Covid-19.

For the week ending June 6, 2020, claimant worked 26.74 hours due to lack of work.

For the week ending August 29, 2020, claimant worked 32.06 hours due to lack of work.

For the week ending September 5, 2020, claimant worked 32.14 hours due to lack of work.

For the week ending September 26, 2020, claimant worked 19.79 hours due to incarceration.

The administrative record reflects that claimant filed for benefits during his employment for the weeks ending March 28, 2020, August 29, 2020, and September 19, 2020. Claimant received regular unemployment insurance (UI) benefits in the gross amount of \$445.00 for each of those three weeks.

In addition to regular unemployment insurance benefits, claimant also received Lost Wages Assistance (LWA). Claimant did not receive Federal Pandemic Unemployment Compensation (FPUC).

The issue of separation has not been the subject of an initial investigation and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1A(37) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time,

if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

For the week ending March 28, 2020, claimant performed no work for employer. Therefore, claimant was totally unemployed. Because claimant was totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that he is able to and available for work. Claimant was absent from work that week because his child tested positive for Covid-19 and employer would not allow claimant to work. Benefits are allowed for that week.

To be partially unemployed for any given week, claimant must work less than 40 hours per week (claimant's regular full-time schedule) and earn less than \$460.00 (claimant's weekly benefit plus \$15).

For the weeks ending May 16, 2020 and June 6, 2020, claimant worked fewer than his regular full-time hours due to lack of work and earned less than his weekly benefit amount plus \$15.00. Therefore, claimant was partially unemployed. Benefits are allowed for those two weeks provided claimant is otherwise eligible and subject to claimant reporting wages earned.

For the weeks ending August 29, 2020 and September 5, 2020, claimant worked fewer than his regular full-time hours due to lack of work; however, claimant earned more than his weekly benefit amount plus \$15.00. Therefore, claimant was not partially unemployed. Benefits are denied for those two weeks.

For the week ending September 26, 2020, claimant worked fewer than his regular full-time hours and earned less than his weekly benefit amount plus \$15.00; however, the reason claimant worked fewer hours was because of his incarceration – not a lack of work from employer. Therefore, claimant was not available for work and is not eligible for benefits. Benefits are denied for that week.

During claimant's employment, he worked his regular full-time hours during the weeks not outlined above. Claimant was not totally, partially or temporarily unemployed for any of those weeks. Accordingly, claimant is not eligible for benefits for those weeks.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes claimant was overpaid benefits, which must be repaid.

Iowa Code section 96.3(7) states:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Claimant received benefits for the week ending August 29, 2020 and September 19, 2020. Claimant was not totally, partially or temporarily unemployed during these two weeks. Therefore, claimant was paid benefits to which he was not entitled. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$890.00 for the weeks ending August 29, 2020 and September 19, 2020. Claimant is required to repay those benefits.

PL 116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

FPUC became effective March 29, 2020. The one week that claimant is eligible for UI benefits occurred before FPUC was effective. Therefore, claimant is not eligible for FPUC benefits.

The issues of separation and whether claimant is eligible for Lost Wages Assistance benefits should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to Covid-19 will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to Covid-19.

DECISION:

The November 16, 2020 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant was totally unemployed and able to and available for work for the week ending March 28, 2020; benefits are allowed provided claimant is otherwise eligible. Claimant was partially unemployed for the weeks ending May 16, 2020 and June 6, 2020; benefits are allowed provided claimant is otherwise eligible and subject to claimant reporting wages earned. Claimant was not totally, partially or temporarily unemployed for any other weeks between filing his initial claim effective March 22, 2020 and his employment ending effective October 9, 2020. Benefits are denied for those weeks.

Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$890.00 for the weeks ending August 29, 2020 and September 19, 2020, which must be repaid.

Claimant is not eligible for Federal Pandemic Unemployment Compensation.

REMAND:

The issues of separation and whether claimant is eligible for Lost Wage Assistance benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant because of Covid-19 is remanded to the Tax Bureau of Iowa Workforce Development for a determination.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 12, 2021
Decision Dated and Mailed

acw/mh

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed after December 1, 2020 for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.