

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**FATMA I MUSHARAFA**  
Claimant

**WALMART INC.**  
Employer

**APPEAL 20A-UI-04925-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.19(38) – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Code § 96.7(2)a(2) – Charges – Same base period employment

**STATEMENT OF THE CASE:**

On May 29, 2020, Fatma Musharafa (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 22, 2020 (reference 02) that found claimant was still employed for the same hours and wages. Benefits were denied.

A telephone hearing was held on June 25, 2020. The parties were properly notified of the hearing. Claimant participated personally. Walmart Inc. (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record. Claimant's Exhibits 1-4 were admitted.

**ISSUE(S):**

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge?
- +
- IV. Was the claimant overpaid benefits?
- V. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on July 31, 2019. Claimant was hired as a part-time sales associate. Claimant is still employed by employer in that position. Claimant was not guaranteed

a specific number of hours at the time of hire. Claimant's hourly rate of pay has not been reduced. Claimant reduced her availability by four hours per week approximately 2-3 months ago due to a medical issue. Claimant is also employed as a substitute teacher for several area school districts. There have been no substitute positions available since approximately mid-March 2020.

Claimant has reported wages for each of the weeks she has made a weekly claim, from the benefit week ending April 4, 2020 and continuing through the benefit week ending June 20, 2020. She earned more than her weekly benefit amount plus \$15.00 in the benefit weeks ending April 4, 2020 through April 25, 2020, and so was ineligible for benefits those weeks. Claimant received benefits in the amount of \$73.00 for the benefit week ending May 2, 2020; \$72.00 for the week ending May 9, 2020; and \$76.00 for the week ending May 16, 2020. The total amount of benefits paid to date is \$221.00.

Claimant has received Federal Pandemic Unemployment Compensation in the amount of \$600.00 for three weeks, for the benefit weeks ending May 2, May 9, and May 16, 2020. The total amount of FPUC benefits paid to date is \$1,800.00.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the decision dated May 22, 2020 (reference 02) that denied benefits is AFFIRMED.

Iowa Code section 96.19(38) 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 Admin. Code r. 871-24.23(26) provides:

**Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

**(26)** Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) 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.

Claimant is not totally, partially, or temporarily unemployed with regard to employer. She is still employed by employer in the same way as was contemplated at the time of hire. Claimant is also still employed by her other employers in the same way as contemplated at the time of hire. As a substitute teacher, claimant performs "on-call" work. There is no guarantee of specific hours in such employment.

Because claimant is not unemployed within the meaning of the law, she is not eligible for benefits. Benefits must be denied. Because claimant is receiving the same employment from employer as during the base period, employer is not charged for benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant received benefits in the amount of \$73.00 for the benefit week ending May 2, 2020; \$72.00 for the week ending May 9, 2020; and \$76.00 for the week ending May 16, 2020. The total amount of benefits paid to date is \$221.00. Because the administrative law judge now affirms claimant is ineligible for benefits, she has been overpaid benefits in that amount. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

PL116-136, 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...

Because the claimant is not eligible for regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$1,800.00. Claimant is required to repay those benefits.

The other issues noticed need not be addressed.

**DECISION:**

The decision dated May 22, 2020 (reference 02) that denied benefits is AFFIRMED. Claimant is not eligible for regular unemployment benefits. Employer's account shall not be charged.

Claimant has been overpaid benefits in the amount of \$221.00. Benefits shall be recovered. The charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund.

Claimant has been overpaid FPUC benefits in the amount of \$1,800.00. Claimant is required to repay those benefits.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
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Fax (515) 478-3528

July 6, 2020  
Decision Dated and Mailed

abd/scn

***Note to Claimant:***

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.