

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CRYSTALLE M BLANTON**  
Claimant

**WALMART INC.**  
Employer

**APPEAL 20A-UI-04953-AD-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

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, Crystalle Blanton (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated May 19, 2020 (reference 01) that found claimant was still employed for the same hours and wages as in the original contract of hire. Benefits were denied.

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

Official notice was taken of the administrative record.

**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 as a cashier on March 9, 2020. Claimant was guaranteed full-time hours at the time of hire but never received full time hours in her brief employment. In early April, claimant took a two-week leave of absence because she was concerned about the safety measures employer was taking in response to the pandemic. This leave was approved by employer.

After the two weeks of leave, claimant attempted to return to work. She tried to log into employer's electronic scheduling system but learned she no longer could. She also tried reaching the HR manager at the store and her supervisor but was unable to reach either. She tried by both telephone and in person. While claimant was never formally discharged, employer's actions – or inaction – upon claimant's attempt to return to work make it clear the employment relationship was terminated by employer.

Claimant's weekly benefit amount is \$211.00. Claimant reported wages in the amount of \$207.00 for the benefit week ending March 28, 2020, and received benefits in the amount of \$56.00. She reported \$182.00 in wages for the benefit weeks ending April 4 and 11, 2020, and received \$81.00 in benefits each week. She reported \$62.00 in wages for the benefit week ending April 18, 2020, and received \$201.99 in wages. She reported no wages and received \$211.00 in benefits for the benefit weeks ending April 25, May 2, and May 9. The total amount of benefits paid to date is \$1,052.00.

Claimant has received FPUC benefits in the amount of \$600.00 for six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of FPUC benefits received to date is \$3,600.00.

Claimant has continued to file weekly claims from the benefit week ending May 16, 2020 and continuing through the benefit week ending June 20, 2020. No wages have been reported. No payments have been issued due to the May 19, 2020 decision.

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

For the reasons that follow, the decision dated May 19, 2020 (reference 01) that denied benefits is REVERSED. Claimant is allowed benefits effective with the benefit week ending March 28, 2020, excluding the benefit weeks ending April 11 and April 18, 2020, provided she is otherwise eligible.

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(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant was partially unemployed the benefit weeks ending March 28, 2020 and April 4, 2020, as she was still employed in her regular job but working less than the weekly benefit amount plus \$15.00. Claimant was not available for work for the benefit weeks ending April 11 and April 18, 2020, as she was on a leave of absence during those weeks. As such, she does not meet the definition of unemployed during those weeks. Claimant is totally unemployed from the benefit week ending April 25, 2020 and continuing to present, as no wages were payable to her and she performed no services during that time.

Because claimant is unemployed within the meaning of the law for the benefit weeks ending March 28 and April 4, 2020, as well as from April 25, 2020 and continuing to present, she is allowed benefits during those weeks provided she is otherwise eligible.

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's weekly benefit amount is \$211.00. Claimant reported wages in the amount of \$207.00 for the benefit week ending March 28, 2020, and received benefits in the amount of \$56.00. She reported \$182.00 in wages for the benefit weeks ending April 4 and 11, 2020, and received \$81.00 in benefits each week. She reported \$62.00 in wages for the benefit week ending April 18, 2020, and received \$201.99 in wages. She reported no wages and received \$211.00 in benefits for the benefit weeks ending April 25, May 2, and May 9.

Because claimant was not unemployed within the meaning of the law during the benefit weeks ending April 11 and April 18, 2020 but received benefits during those weeks, she has been overpaid benefits in the amount of \$282.00. 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.

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...

Claimant has received FPUC benefits in the amount of \$600.00 for six weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 9, 2020. The total amount of FPUC benefits received to date is \$3,600.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits for the weeks ending April 11 and 18, she is also disqualified from receiving FPUC benefits for those weeks. Claimant has therefore been overpaid FPUC benefits in the amount of \$1,200.00. Claimant is required to repay those benefits.

While claimant does have some overpayment due to the two-week leave of absence, the administrative law judge notes that benefits due to claimant for the weeks from May 16, 2020 and continuing through June 20, 2020, should more than offset any overpayment.

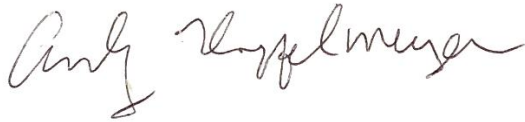
**DECISION:**

The decision dated May 19, 2020 (reference 01) that denied benefits is REVERSED. Claimant is allowed benefits effective with the benefit week ending March 28, 2020, excluding the benefit weeks ending April 11 and April 18, 2020, provided she is otherwise eligible.

Claimant has been overpaid benefits in the amount of \$282.00. 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 \$1,200.00. Claimant is required to repay those benefits.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

July 10, 2020  
Decision Dated and Mailed

abd/sam

***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>.