

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN D KOFRON
Claimant

FAREWAY STORES INC
Employer

APPEAL 20A-UI-05669-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 9, 2020, the employer filed an appeal from the June 8, 2020, (reference 01) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2020. Claimant participated. Employer participated through vice president of human resources Theresa McLaughlin.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer's account subject to charge?
Was the claimant overpaid unemployment insurance benefits?
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 has worked for employer since March 3, 2020. Most recently, claimant works for employer as a part-time cashier.

Claimant's last day of work was April 1, 2020. The next day, claimant began exhibiting symptoms of COVID 19. Claimant's medical provider recommended she not work. Claimant was tested for COVID 19 and the result was negative. Claimant's symptoms continued and her medical provider recommended she not work until she was fever-free for a minimum of 72 hours.

Since filing this claim for unemployment insurance benefits, claimant has received regular unemployment insurance benefits in the amount of \$5,291.00 for the 11 weeks ending June 27, 2020, and Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$6,600.00 for the 11 weeks ending June 27, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he or she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant is totally unemployed. So the issue is whether she is able to and available for work.

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.

Here, employer has work available for claimant. However, claimant informed employer she was unable to work due to exhibiting symptoms of COVID 19. Employer agreed to allow claimant time off for that reason. Claimant has not established she is able to and available for work,

even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

Claimant is considered to be on a leave of absence due to exhibiting symptoms of COVID 19 and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

OVERPAYMENT

Because claimant is not eligible for regular, state-funded unemployment insurance benefits, the next issue is whether she was overpaid benefits prior to the denial decision being issued.

Iowa Code § 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) 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 § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$5,291.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits during the 11 weeks ending June 27, 2020.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

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...

Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC) at this time. In addition to the regular UI benefits claimant received, she also received an additional \$6,600.00 in FPUC benefits for the 11 weeks ending June 27, 2020. Claimant is required to repay those benefits.

DECISION:

The June 8, 2020, (reference 01) unemployment insurance decision is REVERSED. The claimant is on a leave of absence and is not able to and available for work. Regular unemployment insurance benefits funded by the state of Iowa are denied. Claimant is overpaid regular, state-funded unemployment insurance benefits in the amount of \$5,291.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$6,600.00. Claimant will need to repay the benefits, unless she applies for and is approved for PUA, as directed in the paragraph below.



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

July 13, 2020
Decision Dated and Mailed

cal/scn

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 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 under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.