

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAM V REICHART
Claimant

APPEAL 20A-UCFE-00021-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNOVATIVE INDUSTRIES INC
Employer

**OC: 03/29/20
Claimant: Respondent (2R)**

Iowa Code § 96.19(38) – 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 June 30, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2020, at 11:00 a.m. Claimant participated. Employer participated through Carol Smith, Chief Financial Officer and Human Resources Director, and Mary Van Otterloo, Innovative Industries Director. Employer's Exhibits 1 – 2 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 part-time Job Coach from February 25, 2020 until her employment with Innovative Industries ended on May 14, 2020. Claimant worked 10 – 24 hours per week and earned \$10.25 per hour. On March 11, 2020, employer closed its offices to consumers due to Covid-19. During this closure, employer continued to offer employees their regular hours. Claimant did not return to work after March 11, 2020, because of her concerns regarding Covid-19 and her husband being at high risk. Claimant filed an initial claim for benefits effective March 29, 2020. On May 14, 2020, claimant notified employer that she had taken a different job and would not be returning to work. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

The administrative record reflects that claimant has not received unemployment insurance benefits, since filing her original claim effective March 29, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was totally unemployed and not able to and available for work. Benefits are denied.

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 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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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 Admin. R. 871-24.23(29) provides:

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

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

Since March 29, 2020, claimant has performed no work and earned no wages. Therefore, claimant has been totally unemployed. Because claimant is totally unemployed, claimant is required to be able to and available for work. Claimant has the burden of proving that she has been able to and available for work. Claimant was not willing to work her regular hours for employer and, thus, was not available for work. Accordingly, benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment and chargeability are moot. Because claimant is not eligible for regular unemployment insurance benefits, claimant is also not eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

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 due to disqualifying separations, 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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 30, 2020 (reference 02) unemployment insurance decision is reversed. Claimant is totally unemployed and not available for work. Benefits are denied. The issues of overpayment and chargeability are moot. Claimant is not eligible for Federal Pandemic Unemployment Compensation.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Adrienne C. Williamson
Administrative Law Judge
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August 17, 2020
Decision Dated and Mailed

acw/sam