

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KAREN K HUFFORD**  
Claimant

**APPEAL 20A-UI-05058-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(23) – Able & Available – Availability Disqualifications  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
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 1, 2020, the claimant filed an appeal from the May 29, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's continued employment. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2020. Claimant participated. Employer participated through benefits specialist Rhonda Wagoner. After the record was closed, employer sent a written statement to the Appeals Bureau correcting information that was provided in the hearing. The administrative law judge included a copy of the statement in the file, but did not consider the information in making her decision because it was provided after the record was closed and the corrections do not affect or alter the outcome of the decision.

**ISSUES:**

Is the claimant totally, temporarily, or partially 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 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: In August 2017, the employer hired claimant to work as a full-time audiometrist. From April 12, 2020, through the end of the school year on May 29, 2020, employer had full-time work available for claimant.

From April 12, 2020, through May 30, 2020, employer paid claimant on a bi-weekly basis. Claimant received \$1,078.62 on a bi-weekly basis.

Claimant has a part-time job at a restaurant, The Tavern. Claimant was laid off from that job in March 2020, due to the COVID 19 pandemic. Claimant resumed regular hours with her part-time employer on May 30, 2020.

The school year ended on May 29, 2020.

Claimant's weekly benefit amount is \$431.00.

Claimant received \$862.00 in regular unemployment insurance benefits for the two weeks ending April 25, 2020, when she did not report earning wages. Claimant then reported wages of \$500.00 respectively for the two weeks ending May 9, 2020, and did not receive any benefit payment for those weeks. For the two weeks ending May 23, 2020, claimant reported wages of \$400.00 for each respective week and received \$276.00 in regular unemployment insurance benefits. Claimant also received \$2,400.00 in Federal Pandemic Unemployment Compensation (FPUC) during the four weeks where she received regular unemployment insurance benefits.

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

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed and/or able to and available for work effective April 12, 2020.

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. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In this case, the claimant was not partially unemployed during the time period in question because she was still working and being paid from her regular, full-time job. Her hours at her regular, full-time job were not reduced. Claimant is also considered not able to and available for work during that time period because she was working to such a degree that removed her from the job market.

The administrative law judge understands claimant's point that she relies on the wages from her supplemental, part-time employment in order to make ends meet and is sympathetic to her situation. However, chapter 96 of the Iowa Code does not provide unemployment insurance benefits in this situation.

Even if the administrative law judge found claimant eligible for benefits, gross wages from any insured employer must be reported each week and deducted from the weekly benefit amount. In this case, claimant was not eligible for benefits during the two weeks that she reported wages of \$500.00 (and in those weeks, claimant's wages were still underreported). Had claimant reported her gross wages accurately each week, she would not have received any benefits because this employer was paying her wages that equal more than \$15.00 above her weekly benefit amount of \$431.00 each week.

For more information on how wage deductions are calculated, please see the Unemployment Insurance Benefits Handbook at <https://www.iowaworkforcedevelopment.gov/continued-eligibility>.

In summary, claimant is not eligible for regular, state-funded unemployment insurance benefits. Claimant received benefits before receiving the denial decision. Therefore, the next issue is whether claimant was overpaid benefits.

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 \$1,138.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits effective April 12, 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 \$2,400.00 in FPUC benefits. Claimant is required to repay those benefits.

**DECISION:**

The May 29, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not considered partially unemployed or available for work under Iowa law. 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 \$1,138.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$2,400.00. Claimant is required to repay the benefits.



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

July 6, 2020  
Decision Dated and Mailed

cal/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 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>.