

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KYLE J TOTH**

Claimant

**APPEAL 20A-UI-05553-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE CASINO AND GOLF RESORT**

Employer

**OC: 04/05/20**

**Claimant: Respondent (4R)**

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  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

**STATEMENT OF THE CASE:**

Employer filed an appeal from the June 3, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on July 10, 2020, at 9:00 a.m. Claimant did not participate. Employer participated through Tim Donovan, Human Resources Director. No exhibits 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 filed an initial claim for unemployment insurance benefits effective April 5, 2020. Claimant's weekly benefit amount is \$384.00. Claimant began employment with Riverside Casino and Golf Resort on May 30, 2011. Claimant works an average of 30 hours per week. Claimant works as an Executive Wine Steward earning \$7.36 per hour plus tips and as a Food and Beverage Supervisor earning \$15.20 per hour. Employer closed due to Covid-19 from March 16, 2020 through May 31, 2020, per the governor's mandate. Employer paid employees their average wage for the first six weeks of the closure (i.e. March 15, 2020 and April 25, 2020). Employees were not paid for the remainder of the closure. In claimant's case, he received wages of \$549.23 from employer each week between April 5, 2020 and April 25, 2020 and prorated wages of \$392.31 for the week ending May 2, 2020. After employer reopened, claimant

returned to work on June 3, 2020. Claimant earned wages of \$404.00 for the week ending June 6, 2020.

Claimant filed weekly benefit claims for the weeks ending April 11, 2020 through June 6, 2020. For the week ending April 11, 2020, claimant reported vacation pay in the gross amount of \$600.00; no benefit payment was issued. For the weeks ending April 18, 2020 through May 23, 2020, claimant reported no earnings; full benefit payments were issued each week. For the week ending May 30, 2020, claimant reported earnings of \$30.00; a full benefit payment was issued. For the week ending June 6, 2020, claimant reported gross earnings of \$404.00; no benefit payment was issued. Claimant received Federal Pandemic Unemployment Compensation (FPUC) in the gross amount of \$4,200.00 (\$600 per week) for the seven-week period between April 12, 2020 and May 30, 2020.

Claimant reported that he was able to and available for work each week except for the week ending April 11, 2020. To employer's knowledge, claimant has been able to and available for work since filing his initial claim.

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

For the reasons that follow, the administrative law judge concludes:

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(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 difference from the contract for hire, such claimant cannot be considered partially unemployed.

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.

Between April 5, 2020 and April 25, 2020, claimant performed no work but received vacation pay or wages in excess of \$399.00 (claimant's weekly benefit amount plus \$15.00); therefore, claimant was not totally or partially unemployed. Benefits are denied.

For the week ending May 2, 2020, claimant earned wages less than \$399.00; therefore, claimant was partially unemployed. Benefits are allowed subject to claimant reporting his wages and provided claimant is otherwise eligible.

Between May 3, 2020 and May 23, 2020, claimant performed no work and received no wages; therefore, claimant was totally unemployed. Claimant was able to and available for work during this period. Benefits are allowed provided claimant is otherwise eligible.

For the week ending May 30, 2020, claimant earned wages less than \$399.00; therefore, claimant was partially unemployed. Benefits are allowed subject to claimant reporting his wages and provided claimant is otherwise eligible.

For the week ending June 6, 2020, claimant earned wages in excess of \$399.00; therefore, claimant was not totally or partially unemployed. Benefits are denied.

The next issue to be determined is whether claimant has been overpaid benefits. For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.3(3) provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.1A, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.3(7) states:

*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.

Iowa Admin. Code r. 871-24.18 provides:

Wage-earnings limitation. An individual who is partially unemployed may earn weekly a sum equal to the individual's weekly benefit amount plus \$15 before being disqualified for excessive earnings. If such individual earns less than the individual's weekly benefit amount plus \$15, the formula for wage deduction shall be a sum equal to the individual's weekly benefit amount less that part of wages, payable to the individual with respect to that week and rounded to the lower multiple of one dollar, in excess of one-fourth of the individual's weekly benefit amount.

The week ending April 11, 2020 and the five weeks between May 3, 2020 and June 6, 2020, claimant is not overpaid benefits because he either received no benefit payment or received the correct benefit payment due to properly reporting his earnings.

Between April 12, 2020 and April 25, 2020, claimant was not unemployed and, thus, not eligible for benefits. Claimant received full benefit payments to which he was not entitled. For the week ending May 2, 2020, claimant was partially unemployed and, thus, eligible for partial benefits. Claimant received a full benefit payment when he was only entitled to a partial benefit payment of \$87.00, according to the following calculation:

$$\begin{aligned} \$392.31 \text{ (wages)} - \$96.00 \text{ (25\% of WBA)} &= \$296.31 \text{ (wage deduction)} \\ \$384.00 \text{ (WBA)} - \$296.31 \text{ (wage deduction)} &= \$87.69 \text{ (partial weekly benefit amount)} \end{aligned}$$

Claimant received three weeks of full benefits for a total of \$1,152.00, but was only entitled to one week of partial benefits in the amount of \$87.00. The administrative law judge concludes that claimant has been overpaid UI in the gross amount of \$1,065.00 for the three-week period between April 12, 2020 and May 2, 2020. Claimant is required to repay those benefits.

The next issues to be determined are whether claimant is eligible for FPUC and whether claimant has been overpaid FPUC. For the reasons that follow, the administrative law judge concludes:

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...

For the period when claimant is disqualified from receiving UI, claimant is also disqualified from receiving FPUC. The administrative law judge concludes that claimant has been overpaid

FPUC in the gross amount of \$1,200.00 for the two-week period between April 12, 2020 and April 25, 2020. Claimant is required to repay those benefits. For the weeks that claimant is eligible for UI (even partial UI benefits), he is also eligible for Federal Pandemic Unemployment Compensation. See PL 116-136 §2104(B).

The issue of whether the employer will be charged for regular, state-funded unemployment insurance benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for a determination in accordance with the agency's announcement that it would not charge employers for benefits paid due to the COVID 19 pandemic.

**DECISION:**

The June 3, 2020 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant was not unemployed between April 5, 2020 and April 25, 2020 and the week ending June 6, 2020; benefits are denied. Claimant was partially unemployed the weeks ending May 2, 2020 and May 30, 2020; benefits are allowed subject to claimant reporting wages earned and provided claimant is otherwise eligible. Claimant was totally unemployed between May 3, 2020 and May 23, 2020 and was able to and available for work; benefits are allowed provided claimant is otherwise eligible.

Claimant has been overpaid regular unemployment insurance benefits in the gross amount of \$1,065.00 for the three-week period between April 12, 2020 and May 2, 2020, which must be repaid. Claimant has been overpaid Federal Pandemic Unemployment Compensation in the gross amount of \$1,200.00 for the two-week period between April 12, 2020 and April 25, 2020, which must be repaid.

**REMAND:**

The issue of whether employer should be charged for the unemployment insurance benefits paid to claimant since March 29, 2020 because of the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination.

**NOTICE 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.



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July 20, 2020  
Decision Dated and Mailed

acw/scn