

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CLAUDINE N BIRENZI**  
Claimant

**APPEAL NO: 20A-UI-09213-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 05/10/20**  
**Claimant: Appellant (1)**

871 IAC 24.23(10) – Leave of Absence  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 30, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 18, 2020. The claimant participated in the hearing with CTS Language Link Interpreter Mokeza (12991). The employer did not respond to the hearing notice and did not participate in the hearing.

**ISSUE:**

The issues are whether the claimant is able and available for work and whether she is on a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant requested and was given a leave of absence because she is ill and experiencing pain in her chest and legs resulting from her job. Her absence is not COVID-19 related. The claimant's last day worked was April 25, 2020, and she has not returned to work for the employer since then.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of \$5,347.00 in unemployment insurance benefits for the 11 weeks ending July 25, 2020. She also received Federal Pandemic Unemployment Compensation in the amount of \$6,600.00 for the 11 weeks ending July 28, 2020.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work and did take a leave of absence.

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(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.

The claimant requested and was given a leave of absence because she is experiencing pain in her chest and legs from performing the functions of her job. She is not considered able and available during the time she was off work. Accordingly, benefits must be denied.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3(7)a-b, as amended in 2008, provides:

### 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.

The claimant received unemployment insurance benefits. This was during the period of time the claimant has been determined to be ineligible to receive benefits. This decision denies benefits. Consequently, the claimant is overpaid state benefits in the amount of \$5,347.00.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she may be overpaid those benefits.

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...

The claimant has been disqualified from receiving regular unemployment insurance benefits. She has also received Federal Pandemic Unemployment Compensation. If this decision becomes final, she may have an overpayment of Federal Pandemic Unemployment Compensation benefits.

**DECISION:**

The July 30, 2020, reference 01, decision is affirmed. The claimant is not able to work and available for work effective May 10, 2020. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history and the employer has no suitable or comparable work available.

The claimant has received unemployment insurance benefits and Federal Pandemic Unemployment Compensation. This decision denies benefits. If this decision becomes final, she may have an overpayment of benefits.



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Julie Elder  
Administrative Law Judge

September 24, 2020  
Decision Dated and Mailed

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