

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK A WEINSTEIN
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-04679-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1)

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 § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 27, 2020, the claimant filed an appeal from the May 22, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on June 15, 2020. Claimant participated personally and was represented by attorney Elizabeth Norris. Employer did not register for the hearing and did not participate. Law students Anna Lynch and Ruby Cordova observed. Claimant's Exhibits A and B were received into the record.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on an approved leave of absence?
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 October 2013. Most recently, claimant worked for employer as a part-time cashier.

Claimant is a diabetic and is over 60 years old.

Claimant's last day of work was March 27, 2020. Claimant received a voice message from his human resource manager stating that people in high risk categories for severe illness from Covid 19 are eligible for unemployment insurance benefits if they have a doctor's note.

Claimant filed an application for unemployment insurance benefits.

On March 28, 2020, claimant spoke with an assistant manager and asked if it was okay if he did not work that day.

On March 30, 2020, claimant talked to manager Clay Howard and said he was going to stop work because of his health conditions. Howard said that was a good idea.

On May 17, 2020, claimant's doctor issued a doctor's note advising him not to work until further notice because of risk factors associated with COVID 19.

Claimant plans to return to work for employer when a vaccine for COVID 19 is developed.

Since filing a claim with an effective date of March 22, 2020, claimant received regular, state-funded unemployment insurance benefits in the amount of \$1,344.00 for the seven weeks ending May 16, 2020. Claimant also received Federal Pandemic Unemployment Compensation in the amount of \$4,200.00 for the seven weeks ending May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

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).

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 he was unable to work due to conditions that make him at risk for complications if he contracts COVID19. Employer agreed to allow claimant time off for that reason. Claimant has not established he 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 his underlying medical condition and age 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, he 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 claimant 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 \$1,344.00 pursuant to Iowa Code § 96.3(7) as claimant was not eligible for benefits during the seven weeks ending May 16, 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, claimant also received an additional \$4,200.00 in FPUC benefits for the seven week period ending May 16, 2020. Claimant is required to repay those benefits.

DECISION:

The May 22, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work. Claimant is overpaid regular, state-funded unemployment insurance benefits in the amount of \$1,344.00. Claimant is overpaid Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$4,200.00. Claimant must repay those benefits, unless he applies 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

June 26, 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>.