

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CASSIE L HERMSEN
Claimant

APPEAL 20A-UI-04316-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Respondent

OC: 03/22/20
Claimant: Appellant (5)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Voluntary Leave of Absence
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

On May 20, 2020, Cassie Hermsen (claimant/appellant) filed an appeal from the May 8, 2020 (reference 01) unemployment insurance decision that denied benefits.

A telephone hearing was held on June 4, 2020. The parties were properly notified of the hearing. The claimant participated personally. Target Corporation (employer/respondent) participated by executive team leader of HR, Sarah Parris. HR Expert, Jodie Frayne participated as a witness for employer.

Official notice was taken of the administrative record.

ISSUES:

- I. Is the claimant able to and available for work? Is the claimant on an approved leave of absence?
- II. Was the claimant overpaid benefits?
- III. 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 worked for employer as a part-time beauty team member. Claimant's first day of employment was May 15, 2019. The last day claimant worked on the job was August 14, 2019.

Claimant requested and was granted a leave of absence from employer for the period beginning August 14, 2019 continuing until May 20, 2020. The reason for the leave of absence was because claimant would be attending school during that time in Cedar Falls. Claimant was also working part-time for other employers during this same period but was subsequently laid off from those positions due to the pandemic.

Claimant has since secured other employment as of May 11, 2020. Claimant notified employer on May 20, 2020 of having secured other employment and not intending to return to work.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$211.00 for a total of six weeks, from the benefit week ending March 28, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of benefits paid to date is \$1,266.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of five weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of FPUC benefits paid to date is \$3,000.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the May 8, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED with no change in effect. The administrative law judge finds claimant was not able to and available for work from August 14, 2019 through May 20, 2020, and as such she is not eligible for benefits during that time. Claimant is able and available for work effective May 21, 2020 and is eligible for benefits from that time, provided she meets all other eligibility requirements.

- I. Is the claimant able to and available for work? Is the claimant on an approved 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. 871-24.22(2)j(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor

market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

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.

Claimant requested and was granted a leave of absence from employer for the period beginning August 14, 2019 continuing until May 20, 2020. The reason for the leave of absence was because claimant would be attending school during that time in Cedar Falls. Claimant was also working part-time for other employers during this same period but was subsequently laid off from those positions due to the pandemic.

The administrative law judge finds claimant was not available for work during the period in question. This was initially because she was going to school and working part-time elsewhere, and then because she was still on a voluntary leave of absence from employer until May 20, 2020, when she notified employer she would not be returning to work. For these reasons, benefits must be denied during the period in question.

II. Was the claimant overpaid benefits?

Iowa Code section 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) (a) 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 section 96.8, subsection 5.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$211.00 for a total of six weeks, from the benefit week ending March 28, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of benefits paid to date is \$1,266.00.

Because the administrative law judge now affirms the decision finding claimant ineligible for benefits, claimant has been overpaid benefits in the amount of \$1,266.00. 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.

III. Is the claimant eligible for 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...

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$600.00 for a total of five weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of FPUC benefits paid to date is \$3,000.00.

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC benefits. Claimant has therefore been overpaid FPUC benefits in the amount of \$3,000.00. Claimant is required to repay those benefits.

DECISION:

The May 8, 2020 (reference 01) unemployment insurance decision that denied benefits is MODIFIED with no change in effect. The administrative law judge finds claimant was not able to and available for work from August 14, 2019 through May 20, 2020, and as such she is not eligible for benefits during that time. Claimant is able and available for work effective May 21, 2020 and is eligible for benefits from that time, provided she meets all other eligibility requirements.

Because claimant was eligible for benefits during the time in question, claimant has been overpaid benefits in the amount of \$1,266.00. 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.

Claimant has also been overpaid FPUC benefits in the amount of \$3,000.00. Claimant is required to repay those benefits.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

June 15, 2020
Decision Dated and Mailed

abd/sam

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>.