

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARTER L MARTIN
Claimant

HY-VEE INC
Employer

APPEAL NO. 20A-UI-04323-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Carter Martin filed a timely appeal from the May 11, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Ms. Martin's status as a full-time student prevented her from being available for work within the meaning of the law. After due notice was issued, a hearing was held on June 5, 2020. Ms. Martin participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibit A was received into the hearing record. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, and WAGE-A. The administrative hereby takes official notice of the Iowa Workforce Development news release on March 16, 2020, published at www.iowaworkforcedevelopment.gov/news-releases-archive, and The University of Iowa's 2019-2020 academic calendar published at <http://catalog.registrar.uiowa.edu/calendar/calendar.pdf>.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant has been overpaid regular state benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carter Martin established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set Ms. Martin's weekly benefit amount at \$153.00, based on Ms. Martin's base period wages. Ms. Martin's base period consists of the fourth quarter of 2018 and the first, second and third quarters of 2019. Hy-Vee is the sole base period employer. Ms. Martin's permanent home is in Davenport and the Hy-Vee wages are from work performed as an "all jobber" at a Hy-Vee store in Davenport. Ms. Martin's base period wages from Hy-Vee were as follows:

<u>Quarter</u>	<u>Quarterly Wages</u>
2019/1	924.31
2019/2	1,779.39
2019/3	3,534.86

Ms. Martin had no base period wages during the fourth quarter of 2018. Ms. Martin also did not receive wages from Hy-Vee during the fourth quarter of 2019. Hy-Vee paid Ms. Martin \$131.25 in wages in the first quarter 2020 for a couple day's work. Throughout the base period, Ms. Martin was a full-time college student at the University of Iowa. All of the work Ms. Martin performed for Hy-Vee during the base period was performed when Ms. Martin was on an academic break and back home with her family in Davenport. The most recent work Ms. Martin performed for Hy-Vee was performed in January 2020 during the University of Iowa semester break that that ended on January 20, 2020. Though Ms. Martin asserts that her most recent departure from Hy-Vee was a layoff, she instead left the employer voluntarily to return to college in Iowa City. Ms. Martin asserts she is a current Hy-Vee employee, though she has declined to make herself available for work with Hy-Vee since she established her claim for benefits.

During the fourth calendar quarter of 2019 and the first calendar quarter of 2020, Ms. Martin was employed on a part-time, temporary basis with the Bernie Sander's presidential campaign. The campaign laid off Ms. Martin immediately after the February 3, 2020 Iowa caucus.

During the Spring 2020 academic semester, Ms. Martin worked as a part-time student security worker at The University of Iowa. That work provided four hours of work per week and was only available to Ms. Martin due to her student status. In other words, the work at the University of Iowa was a form of student financial aid.

The University of Iowa 2020 Spring Break officially began on Sunday, March 15, 2020, but unofficially began at the close of classes on Friday, March 13, 2020. On March 13, 2020, Ms. Martin returned home to Davenport. The 2020 Spring Break occurred in the context of the COVID-19 pandemic. During the week of March 15-21, The University of Iowa announced that when classes resumed on Monday, March 30, 2020, the campus would not reopen and that classes would be held online for the remainder of the semester. Closure of the campus meant that Ms. Martin would not be able to continue in her paid student work for the remainder of the academic year. The University of Iowa elected to pay affected student workers, including Ms. Martin, the student wages they would have earned for the remainder of the semester but for the campus closure.

It was during the first week of Spring Break that Ms. Martin established the original claim for unemployment insurance benefits that was effective March 15, 2020. Ms. Martin elected not to contact Hy-Vee to let the former, base period employer know that she was back in Davenport for Spring Break or that she would remain in Davenport for an extended period. Ms. Martin cites three reasons for not contacting Hy-Vee. First, she was too busy with her academic studies. At the end of Spring Break, Ms. Martin returned to her full-time studies in an online format. While some of Ms. Martin's classes maintained the same class schedule, Ms. Martin had discretion to schedule most of her online class participation. Second, a week or more after Ms. Martin established her claim for benefits, two of Ms. Martin's family members were sent home on a two-week self-quarantine due to possible COVID-19 exposure in their workplace. Ms. Martin is unsure of the exact period of her family members' two-week quarantine. Neither family member contracted COVID-19 nor exposed Ms. Martin to COVID-19. Nor did Ms. Martin contract COVID-19. Ms. Martin asserts a third reason for not contacting Hy-Vee for possible employment, that she was not required by law to look for work as a condition of being eligible for

unemployment insurance benefits. On March 16, 2020, Iowa Governor Kim Reynolds and Iowa Workforce Development Beth Townsend made a public announcement that included the following:

If you are laid off due to COVID-19 or have to stay home to self-isolate, care for family members or due to illness related to COVID-19, you can receive unemployment benefits, provided you meet all other eligibility requirements. Work search requirements will be waived.

See www.iowaworkforcedevelopment.gov/news-releases-archive, News Release Date 2020-3-16.

After Ms. Martin established her original claim for benefits, she made weekly claims for the period of March 15, 2020 through the benefit week that ended May 2, 2020. For each week of her claim, Ms. Martin reported that she was able to work and available for work. Ms. Martin reported wages and received regular state benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>State Benefits Paid</u>
03/21/20	0.00	153.00
03/28/20	0.00	153.00
04/04/20	0.00	153.00
04/11/20	0.00	153.00
04/18/20	255.00 (U of Iowa)	0.00
04/25/20	0.00	153.00
05/02/20	242.00 (U of Iowa)	0.00

Ms. Martin also received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the weeks that ended April 4, April 11, and April 24, 2020 for a total of \$1,800.00 in FPUC benefits.

After Hy-Vee received notice of Ms. Martin's unemployment insurance claim, a Davenport Hy-Vee representative contacted Ms. Martin to let her know that the Davenport store was preparing the work schedule and had employment for her. Ms. Martin indicated that she was busy with her full-time studies and communicated a significantly restricted work availability schedule. Hy-Vee advised that it had work available that would fit Ms. Martin's restricted availability. Ms. Martin elected not to return to work at Hy-Vee. Ms. Martin was perturbed that Hy-Vee had waited to contact her until after Hy-Vee challenged her claim for unemployment insurance benefits. Ms. Martin advises that she might have provided a different statement of availability if Hy-Vee had contacted her earlier.

REASONING AND CONCLUSIONS OF LAW:

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) 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.

Iowa Admin. Code r. 871-24.23 provides, in relevant part, as follows:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The weight of the evidence establishes that Ms. Martin has not been available for work within the meaning of the law since she established the original claim for benefits that was effective March 15, 2020. Ms. Martin has elected to not make herself available for employment since she established her claim for benefits. Ms. Martin cites her full-time academic studies as her primary basis for not making herself available for *any* work with Hy-Vee, though she asserts she is a current employee of Hy-Vee. In other words, Ms. Martin was not available for work with this employer to the same extent as in the base period. During the first two weeks of Ms. Martin's claim, she was on an academic break. Though she was back home in Davenport on academic break, she elected not to contact Hy-Vee, even though she indicates that all work for Hy-Vee during the base period and since then was performed while she was in Davenport on an academic break. Ms. Martin cannot claim a COVID-19 basis for her unemployment insurance claim. Ms. Martin was not laid off due to COVID-19. The student work at the University of Iowa was not employment within the meaning of the unemployment insurance law. See Iowa Code section 96.19(18)(g)(6); see also Iowa Administrative Code rule 871-23.20. Ms. Martin did not

contract COVID-19, was not exposed to COVID-19, and was not advised by a physician to self-quarantine. Ms. Martin's family members did not contract COVID-19 and, therefore, did not need care from Ms. Martin in connection with contracting COVID-19. Ms. Martin's assertion that she needed stay home because her family members were on self-quarantine is dubious. Ms. Martin's reliance on Iowa Workforce Development's March 16, 2020 announcement of a work search waiver as a basis for actively avoiding available work with her current employer is misplaced. The weight of the evidence establishes that Ms. Martin elected to try to game the unemployment insurance system to her advantage while actively avoiding readily available work. Benefits are denied for the period beginning March 15, 2020 and through the benefit week that ended May 2, 2020. In the event Ms. Martin files an additional claim for benefits at some future date, her ability to work and availability for work will continue to be a factor in her eligibility for unemployment insurance benefits.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recovery the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because the May 11, 2020, reference 01, decision denied benefits effective March 15, 2020, and because this decision affirms the denial, the \$765.00 in benefits that Ms. Martin received for five weeks between March 15, 2020 and April 25, 2020 is an overpayment of benefit. Ms. Martin must repay the overpaid 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...

Because Ms. Martin is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving Federal Pandemic Unemployment Compensation

(FPUC). The \$1,800.00 in FPUC benefits Ms. Martin received for the weeks ending April 4, 11, and 25, 2020 is an overpayment of benefits. Ms. Martin must repay the overpaid benefits.

DECISION:

The May 11, 2020, reference 01, decision is affirmed. The claimant has not been available for work since establishing her claim for benefits. Benefits are denied effective March 15, 2020 and through the benefit week that ended May 2, 2020. The claimant is overpaid \$765.00 in regular state benefits for five weeks between March 15, 2020 and April 25, 2020. The claimant is overpaid \$1,800.00 in Federal Pandemic Unemployment Compensation for the weeks that ended April 4, 11 and 25, 2020. The claimant must repay the overpaid state and federal benefits.



James E. Timberland
Administrative Law Judge

July 1, 2020
Decision Dated and Mailed

jet/mh