

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN M FLAHERTY
Claimant

MERCY CLINICS INC
Employer

APPEAL 20A-UI-04917-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Part time, same hours and wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Code § 96.3(7) – Recovery of Benefit Overpayment
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The claimant/appellant, Susan M. Flaherty, filed an appeal from the May 27, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits effective March 15, 2020, concluding the claimant was ineligible for benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2020. The hearing was held jointly with Appeal: 20A-UI-06747-JC-T. The claimant participated personally. The employer, Mercy Clinics Inc., notified the Appeals Bureau prior to the hearing that it was not contesting benefits and would not participate in the hearing.

Claimant Exhibits 1-4 were admitted into evidence. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant eligible for total or partial unemployment benefits effective March 15, 2020?
Is claimant employed for the same hours and wages?
Is the claimant able to and available for work?
Is the employer’s account subject to charges?
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: The claimant has been employed with this employer for 17 years as a registered nurse. While she is listed as an on-call registered nurse, the employer has put her on the schedule for three days a week (for 24 hours per week) for the past 17 years and allows her to also pick up extra on call shifts if she chooses. She earns \$23.95 per hour.

In addition, the claimant works part-time as a waitress at Rube's Steakhouse. She has also worked at Rube's for approximately 17 years. She generally works one shift per week and earns \$4.09 per hour plus tips.

The claimant established her claim for benefits with an effective date March 15, 2020 when Rube's Steakhouse was closed due to the governor's mandate, in response to COVID-19. Shortly thereafter, her hours were reduced from Mercy Clinics Inc. each week, as it was also impacted by the COVID-19 pandemic. The claimant's base period employment consists only of these two employers.

Since the COVID-19 pandemic, which coincided with the claimant's filing a claim for unemployment insurance benefits, she has worked all available shifts between both employers. She has no restrictions to employment.

Despite being denied benefits after the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of claimants while their claims were pending due to the backlog caused by the recent COVID 19 outbreak. Claimant was one of the individuals whose funds were released pending the initial decision. The administrative record shows, claimant filed for and received a total of \$3,280.00 in unemployment insurance benefits for the weeks between March 15, 2020 and May 16, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$4,200.00 in federal benefits for the seven-week period ending May 16, 2020.

The claimant's wages earned with Mercy Clinics Inc., for the period of March 15, 2020 through April 11, 2020 were not initially recorded on her weekly claims due to confusion. The claimant contacted IWD on multiple occasions by both email and phone to provide updated, corrected wages for those four weeks (Claimant Exhibit 4). However, at the time of hearing, the wage records had not been updated by IWD.

REASONING AND CONCLUSIONS OF LAW:

The first issue before the administrative law judge is whether the employer's agreement not to contest a claim for unemployment insurance benefits insures that the claimant will receive unemployment benefits. It does not. The decision about whether a claimant receives or is denied unemployment insurance benefits is not up to the employer or the claimant, but is determined by Iowa Workforce Development applying the facts of the claimant's employment to the Unemployment Security Law as enacted by the state legislature. Whereupon the employer might agree not to contest a claim, that promise, in and of itself, does not guarantee that a claimant will receive unemployment insurance benefits, but only that the employer will not hinder any efforts on the part of the claimant to make a claim for unemployment benefits.

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

Iowa Code § 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", subparagraph (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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 § 96.7(2)a(2)a provides:

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.

(emphasis added).

In this case, the claimant's regular schedule is 24 hours per week, and has been for approximately 17 years. Even though the claimant is not classified as a full-time employee, her "regular" schedule for her entire base period has been 24 hours per week. Claimant's hours were reduced due to the business needs of the employer. Claimant has been partially unemployed since March 15, 2020. The claimant must report gross earnings during each week claimed.

The claimant's unrecorded wages in conjunction with her weekly continued claims for the period of March 15, 2020 through April 11, 2020 are also remanded to the Benefits Bureau for an adjustment on weekly reported wages and possible overpayment. (See Claimant Exhibit 4).

The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

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 eligible for regular unemployment insurance (UI) benefits. Accordingly, this also qualifies claimant for Federal Pandemic Unemployment Compensation (FPUC).

DECISION:

The unemployment insurance decision dated May 27, 2020, (reference 01) is reversed. Claimant is partially unemployed. Benefits are allowed effective March 15, 2020, provided the claimant is otherwise eligible.

REMAND: The issue of whether the employer will be charged for benefits paid due to the COVID 19 pandemic will be remanded to the Tax Bureau of Iowa Workforce Development for an initial determination on the allocation of charges.

The claimant's unrecorded wages in conjunction with her weekly continued claims for the period of March 15, 2020 through April 11, 2020 are also remanded to the Benefits Bureau for an adjustment on weekly reported wages and possible overpayment. (See Claimant Exhibit 4).



Jennifer L. Beckman
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July 8, 2020
Decision Dated and Mailed

jlb/scn