

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MONICA MUJICA
Claimant

APPEAL 21A-UI-16874-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

**OC: 05/09/21
Claimant: Respondent (4)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed an appeal from the July 21, 2021, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion she was discharged, but work-related misconduct was not shown. The parties were properly notified of the hearing. A telephone hearing was held on September 23, 2021. The claimant participated. Spanish interpretation services were provided by interpreter identification numbers, 8757 and 13437, via CTS Language Link. The employer participated through Human Resources Representative Mitchell Parker.

ISSUES:

Whether the claimant's separation from employment was disqualifying?
Whether the claimant was able and available?
Whether the claimant has been overpaid benefits?
Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a cook from May 17, 2000, until this employment ended on April 3, 2020, when she was placed on furlough.

On April 3, 2020, the employer furloughed its employees because of Governor Kim Reynolds' Covid19 proclamation closing the casino and other industries.

On December 9, 2020, Human Resources Generalist Hanna Hopkins contacted the claimant regarding an offer to return from furlough. The claimant said she was unable to return from

furlough at that time because she did not have adequate childcare. The claimant did not give an anticipated date that she could return from furlough. No specific position was discussed during this phone call. The employer terminated the claimant's employment on that day because she said she would not be able to return from furlough at that time. The claimant explained that she needed to stay home with her children due to the Covid19 pandemic changing how her children attend school at Louis Central School. Ms. Hopkins was not made available to testify because she resigned on February 19, 2021.

The claimant's childcare issue was not resolved until school started its fall semester for the week ending September 4, 2021.

The following section describes the findings of fact necessary for the overpayment issue:

The administrative record KFFV shows the parties were sent a notice of a fact finding on July 2, 2021 for an interview occurring on July 16, 2021 at 2:20 p.m. Human Resources Representative Mitchell Parker and the claimant participated in the fact finding interview.

The administrative record DBIN shows the claimant filed for and received 23 full weekly benefit amounts of \$306.00 in Pandemic Emergency Unemployment Compensation benefits from the week ending December 5, 2020 through the week ending May 8, 2021 for a total of \$7,038.00. The administrative record KPYX shows the claimant received \$5,700.00 in Federal Pandemic Unemployment Compensation benefits from December 5, 2020 through the week ending May 8, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off. The administrative law judge further concludes the claimant was not able and available for work until the week ending September 4, 2021.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant was laid off on April 3, 2020. The administrative law judge declines to evaluate the phone call on December 9, 2020 as a separation. The claimant had been totally unemployed for

eight months. In that context, the phone call on December 9, 2020 is more akin to a refusal to work than a separation.

The next issue to evaluate is whether the claimant was able and available for work effective December 9, 2020.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

During the hearing, the claimant acknowledged she had only recently become available to work in the first week of September 2021 when her children returned to attend school in person. The claimant was unable to take work prior to that because she lacked adequate childcare. Accordingly, she is not eligible for unemployment insurance benefits.

The next issue to evaluate is whether the claimant was overpaid for regular 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 claimant received \$7,038.00 in regular unemployment benefits from the week ending December 5, 2020 through the week ending May 8, 2021 for a total of \$7,038.00.

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").

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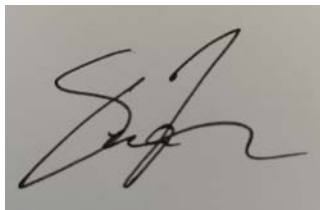
(f) Fraud and Overpayments

(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 administrative record KPYX shows the claimant received \$5,700.00 in Federal Pandemic Unemployment Compensation benefits from December 5, 2020 through the week ending May 8, 2021.

DECISION:

The July 21, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant was laid off. The claimant was not able and available effective December 9, 2020. Benefits are denied effective December 9, 2020. The claimant is overpaid \$7,038.00 in regular unemployment insurance benefits which shall be repaid. The claimant is overpaid \$5,700.00 in FPUC benefits, which shall be repaid.



Sean M. Nelson
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September 30, 2021
Decision Dated and Mailed

smn/scn