

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAMONA G DUNAGAN

Claimant

APPEAL NO. 20A-UI-04714-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY COMMUNITY SCHOOL DIST

Employer

OC: 03/15/20

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary & Partial Unemployment

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:

Ramona Dunagan filed a timely appeal from the May 18, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Ms. Dunagan was unduly restricting her availability for work. After due notice was issued, a hearing was held on June 15, 2020. Ms. Dunagan participated. Stefanie Verros, Assistant Director of Human Resources, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of March 15, 2020 through May 2, 2020.

Whether the claimant was temporarily and/or partially unemployed during the period of March 15, 2020 through May 2, 2020.

Whether the claimant has been overpaid regular benefits.

Whether the claimant has been overpaid Federal Pandemic Unemployment Compensation (FPUC).

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ramona Dunagan established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set Ms. Dunagan's weekly benefit amount at \$190.00. Ms. Dunagan made weekly claims for the seven weeks between March 15, 2020 and May 2, 2020. Iowa Workforce Development paid Ms. Dunagan \$190.00 in regular benefits for the week that ended March 21, 2020 and for the five weeks between March 29, 2020 and May 2, 2020. The regular benefits paid to Ms. Dunagan totaled \$1,140.00. Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) to Ms. Dunagan for the

week that ended April 4, 2020. Ms. Dunagan discontinued her claim for benefits after the benefit week that ended May 2, 2020.

At the time Ms. Dunagan established her claim for benefits, she was employed by the Sioux City Community School District as a part-time bus aide. Ms. Dunagan began her employment with the District in 2017. Ms. Dunagan's regular duties involve assisting and interacting with students with special needs to ensure their safety and wellbeing during transport to and from school. Ms. Dunagan would start her workday at 6:15 a.m. and would be done with her morning shift by 9:00 a.m. Ms. Dunagan would start her afternoon shift at 2:15 p.m. and be done between 4:30 and 5:00 p.m. Ms. Dunagan averaged 25 hours per week. Her wage was \$13.58.

Ms. Dunagan last performed her regular duties on Friday, March 13, 2020. On Sunday, March 15, 2020, the District announced that was closing schools closing schools for two weeks in response to the COVID-19 pandemic. The District subsequently announced that it was closing schools for the remainder of the school year. The District transitioned students to online learning for the remainder of the school year and this eliminated the need for Ms. Dunagan's bus aide work for the remainder the school year. The school year officially ended on June 2, 2020.

The District had no work for Ms. Dunagan during the week of March 15-21, 2020 and paid no wages to Ms. Dunagan for that week. Ms. Dunagan established her unemployment insurance claim in response to the sudden loss of work.

On March 23, 2020, the employer assigned Ms. Dunagan to perform alternative work of painting and cleaning beginning March 24, 2020. Ms. Dunagan performed the alternative work on March 24-27, 2020. Ms. Dunagan's wages for the week that ended March 28, 2020 totaled \$256.00. Ms. Dunagan was diagnosed with chronic obstructive pulmonary disease (COPD) in 2018. When the employer gave Ms. Dunagan the option of going off work and utilizing accrued sick leave, Ms. Dunagan chose that option, rather than deal with the paint fumes or chemical fumes from cleaning supplies.

Ms. Dunagan began using accrued sick leave effective Monday, March 30, 2020. Ms. Dunagan used 25 hours of sick leave, valued at \$339.50, for the week that ended April 4, 2020.

For the week that ended April 11, 2020, Ms. Dunagan used three days of sick leave, valued at \$203.70. For that same week, the employer also paid Ms. Dunagan \$67.90 for a day of vacation pay and \$67.90 for a day of holiday pay. The combined pay for the week that ended April 11, 2020 totaled \$339.50.

For the week that ended April 18, 2020, Ms. Dunagan used 20 hours of sick pay, valued at \$271.60 and received an additional \$67.90 in holiday pay. The combined pay for the week that ended April 18, 2020 was \$339.50.

For the weeks that ended April 25, May 2, and May 9, 2020, Ms. Dunagan again used 25 hours in sick pay, valued at \$339.50 per week.

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(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

In response to the economic impact of the COVID-19 pandemic, Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers.

The evidence in the record establishes that Ms. Dunagan was able to work, was available for work, but was temporarily laid off due to a COVID-19 school closure during the week that ended March 21, 2020. Ms. Dunagan is eligible for benefits for the week that ended March 21, 2020, provided she meets all other eligibility requirements. The employer's account will not be charged for the benefits paid to Ms. Dunagan for that week that ended March 21, 2020.

Ms. Dunagan was able to work and available for work during the benefit week that ended March 28, 2020. Ms. Dunagan made herself available for the work the employer had for her on March 24-27, 2020, for which she was paid \$256.00. Though the employer had a reduced number of hours for Ms. Dunagan that week, Ms. Dunagan cannot be considered partially unemployed during that week because her weekly wages exceeded her \$190.00 weekly benefit amount by more than \$15.00. Ms. Dunagan is not eligible for benefits for the week that ended March 28, 2020.

Ms. Dunagan cannot be considered available for work or temporarily or partially unemployed during the weeks between March 29, 2020 and May 2, 2020, when she elected to go off work due to the paint fumes and cleaning chemical fumes in the context of her underlying COPD. The employer continued to have work available for Ms. Dunagan. Ms. Dunagan presented insufficient evidence to establish that the COPD issue prevented her from performing the painting and/or cleaning work. Another reason Ms. Dunagan cannot be considered temporarily or partially unemployed during these weeks is that she continued to receive sick pay, holiday pay and/or vacation pay that exceeded her weekly \$190.00 weekly benefit amount by more than \$15.00 during each of the weeks between March 29, 2020 and May 2, 2020. Ms. Dunagan is not eligible for benefits for the weeks between March 29, 2020 and May 2, 2020.

Because Ms. Dunagan has not filed weekly claims subsequent to the benefit week that ended May 2, 2020, the administrative law judge need not address the able and available, temporary unemployment, or partial unemployment for the period subsequent to May 2, 2020. In the event Ms. Dunagan reactivates her claim for benefits those issues pertaining to future benefit weeks may be addressed as part of the reactivated claim.

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 this decision disqualifies Ms. Dunagan for benefits for the period of March 29, 2020 through May 2, 2020, the \$950.00 in regular benefits she received for that period is an overpayment of benefits that Ms. Dunagan must repay.

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. Dunagan was ineligible for regular benefits for the week that ended April 4, 2020, she was also ineligible for Federal Pandemic Unemployment Compensation (FPUC) for that week. Accordingly, the \$600.00 in FPUC benefits that Ms. Dunagan received for the week that ended April 4, 2020 is an overpayment that Ms. Dunagan must repay.

DECISION:

The May 18, 2020, reference 01, decision is modified in favor of the claimant as follows. The claimant was able, was available for work, but was temporarily laid off during the week that ended March 21, 2020. The claimant is eligible for benefits for the week that ended March 21, 2020. The employer's account shall not be charged for the benefits paid to the claimant for the week that ended March 21, 2020. The claimant met the availability requirement, but was not partially unemployed during the week that ended March 28, 2020 and is not eligible for benefits for that week. The claimant did not meet the availability requirement and was not temporarily and/or partially unemployed during the five weeks between March 29, 2020 and May 2, 2020. The claimant is not eligible for benefits for the five weeks between March 29, 2020 and May 2, 2020. The claimant was overpaid \$950.00 in regular benefits for five weeks between March 29, 2020 and May 2, 2020. The claimant was overpaid \$600.00 in FPUC benefits for the week that ended April 4, 2020. The claimant must repay the overpaid regular and FPUC benefits.



James E. Timberland
Administrative Law Judge

July 14, 2020
Decision Dated and Mailed

jet/scn