

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACY L SHELLABARGER
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 20A-UI-07277-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code §96.4(5) – Reasonable Assurance
Iowa Code § 96.19(38)B – Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 23, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment insurance benefits between successive years or terms. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2020. The claimant, Stacy L. Shellabarger, participated personally. The employer, The University of Iowa, participated through witness Jessica Wade. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for benefits between academic years or terms?
Is the claimant eligible for total or partial unemployment benefits?
Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer on September 21, 2015. She is still employed to date. Claimant works as a part-time pharmacy technician at the hospital. She is guaranteed at least 40 hours per two-week pay period. Claimant works year-round and does not teach, research or work in an administrative capacity with this employer.

Claimant filed her initial claim for unemployment insurance benefits with an effective date of March 29, 2020. This employer is the only employer in her base period. Claimant is also self-employed as a massage therapist. Her self-employment ended temporarily when the COVID 19 pandemic occurred in March of 2020 because her self-employment business was closed down.

Claimant re-opened her claim for benefits effective April 26, 2020. Claimant filed an additional claim for benefits effective July 12, 2020. Weekly-continued claims shown on her administrative records establish that she reported wages earned for each week between March 29, 2020 and July 25, 2020.

Claimant has worked her regularly scheduled hours for this employer since March 29, 2020 except for two weeks when she was required to take unpaid furlough days. For the week of July 5, 2020 through July 11, 2020, claimant did not work her two scheduled shifts in order to satisfy the employer's unpaid furlough requests. However, claimant's administrative records establish that she reported earning gross wages of \$143.00 for that week.

The week of July 12, 2020 through July 18, 2020, claimant worked partially during that week but was furloughed for four hours that week. Claimant reported earnings for the week of July 12, 2020 through July 18, 2020 from this employer of \$214.00. Her weekly-benefit amount is \$256.00.

The employer contends that the claimant's hours were reduced during the weeks in which she was furloughed due to the COVID 19 pandemic. The issue of chargeability of benefits paid shall be remanded to the Tax Bureau for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.4(5)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.1A, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

Claimant's position as a pharmacy technician with the hospital is not service in an instructional, research, or principal administrative capacity in an educational institution. As such, claimant is not disqualified for benefits due to reasonable assurance pursuant to Iowa Code § 96.4(5).

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".

(emphasis added).

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.

In this case, the claimant testified that she was totally unemployed due to furlough for the week of July 5, 2020 through July 11, 2020 and that she did not work and earn any wages that week. However, her administrative records establish that she reported earning \$143.00 in wages during that week. Whether claimant was totally unemployed or partially unemployed that week, she is still eligible for benefits from July 5, 2020 through July 11, 2020.

During the week of July 12, 2020 through July 18, 2020, claimant was partially unemployed because she worked less than her regular full-time week (which for her was 20 hours), and she earned less than her weekly benefit amount, plus fifteen dollars. Claimant is eligible for benefits for the week of July 12, 2020 through July 18, 2020 due to her being partially unemployed that week.

As such, benefits are allowed for the two-week period of time from July 5, 2020 through July 18, 2020, provided the claimant is otherwise eligible. Benefits are denied effective March 29, 2020 through July 4, 2020 and for the one-week period of July 19, 2020 through July 25, 2020 as the claimant earned wages in excess of her weekly-benefit amount, plus fifteen dollars.

The employer contends that the reduction in hours for those two weeks was due to the COVID 19 pandemic. The chargeability issue and whether the employer's account may be charged for benefits paid to the claimant due to her reduction in hours worked because of the COVID 19

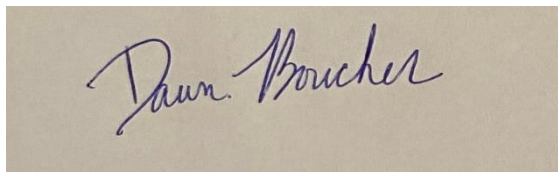
pandemic is remanded to the Tax Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The June 23, 2020 (reference 01) decision is modified in favor of the appellant. Claimant has established that she was totally or partially unemployed for the two weeks beginning July 5, 2020 through July 18, 2020. Benefits are allowed for that two-week period, provided the claimant is otherwise eligible.

This decision denies unemployment insurance benefits funded by the State of Iowa. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits. See Note to Claimant below.

REMAND: The chargeability issue delineated in the findings of fact of whether the employer's account may be charged for benefits paid due to the COVID 19 pandemic is remanded to the Tax Bureau of Iowa Workforce Development for a determination of allocation of charges.



Dawn Boucher
Administrative Law Judge

August 14, 2020
Decision Dated and Mailed

db/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law. 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. If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus. **You will need to apply for PUA to determine your eligibility under the program.** For additional information on how to apply for PUA go to: <https://www.iowaworkforcedevelopment.gov/pua-information>.

If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit: <https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to "Submit Proof Here." You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting: <https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>. If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.