

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELLY A ROBERTSON
Claimant

KUM & GO LC
Employer

APPEAL 20A-UI-04456-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/22/20
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Sec 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On May 22, 2020, the claimant filed an appeal from the May 18, 2020, (reference 01) unemployment insurance decision that denied benefits based on the claimant being on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on June 9, 2020. Claimant participated personally. Employer, Kum & Go LC, participated through witness Danielle Nardini. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to and available for work?
Is the claimant on a leave of absence?
Is the claimant overpaid benefits?
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: Claimant has worked for employer since July 13, 2018. Most recently, claimant works for employer as a part-time store associate. Claimant's supervisor is Alissa Peterson.

Claimant's last day of work was February 24, 2020. Claimant is on a medical leave of absence because she is currently recovering from a medical condition and surgery which occurred in February, 2020. Claimant is still under the care of her physician and is restricted from working at this time.

Claimant's administrative records establish that she had received unemployment insurance benefits of \$1,395.00 from March 22, 2020 through May 9, 2020. Claimant has also received Federal Pandemic Unemployment Compensation benefits of \$3,000.00 from April 5, 2020 through May 9, 2020.

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", 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 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.

Here, employer has work available for claimant. However, claimant is unable to work due to a medical condition that she is recovering from. Employer agreed to allow claimant time off for that reason. Claimant has not established is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits. Because benefits are denied, the issues of overpayment of benefits must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid unemployment insurance benefits of \$1,395.00 from March 22, 2020 through May 9, 2020 and must repay the agency those benefits.

The next issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation benefits. The administrative law judge finds that she is and that those must be repaid to the agency.

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 disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular benefits claimant received, the claimant also received an additional \$3,000.00 in Federal Pandemic Unemployment Compensation benefits from April 5, 2020 through May 9, 2020. Claimant is overpaid and required to repay those benefits as well.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the Cares Act creates a new temporary federal program called Pandemic Unemployment Assistance ("PUA") that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the additional \$600.00 weekly benefit amount ("WBA") under the Federal Pandemic Unemployment Compensation ("FPUC") program if he or she is eligible for such compensation for the week claimed. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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. Individuals who do

not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for ("PUA"). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at:

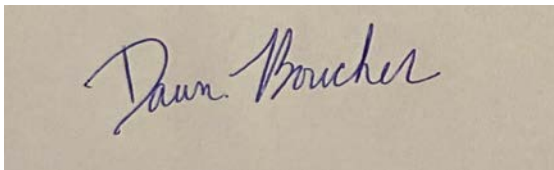
<https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The May 18, 2020 (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Unemployment insurance benefits funded by the State of Iowa are denied until such time claimant is able to and available for work.

The claimant has been overpaid regular unemployment insurance benefits of \$1,395.00 for the weeks between March 22, 2020 and May 9, 2020 and is obligated to repay the agency those benefits.

The claimant has also been overpaid Federal Pandemic Unemployment Compensation benefits in addition to regular unemployment insurance benefits. Claimant is overpaid \$3,000.00 in Federal Pandemic Unemployment Compensation benefits from April 5, 2020 through May 9, 2020 and is obligated to repay the agency those benefits as well.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

June 24, 2020
Decision Dated and Mailed

db/scn