

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DOUGLAS J OBERHOFFER**  
Claimant

**APPEAL 20A-UI-05448-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SLB OF IOWA LC**  
Employer

**OC: 04/05/20**  
**Claimant: Respondent (2)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours  
Iowa Code § 96.3(7) – Overpayment of Benefits  
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation  
Iowa Code § 96.7(2)a(2) – Employer Chargeability

**STATEMENT OF THE CASE:**

On June 8, 2020, SLB of Iowa, LC (employer) filed an appeal from the May 29, 2020, reference 01, unemployment insurance decision that allowed benefits effective April 5, 2020, because the agency determined Douglas Oberhoffer (claimant) was not employed in his same hours and wages as contemplated in the contract of hire but was able to and available for work. After due notice was issued, a telephone hearing was held on July 16, 2020. The claimant participated personally. The employer participated through Karen Beard, Human Resources Manager. No exhibits were offered into the record. The administrative law judge took official notice of the claimant's claim and wage histories

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to and available for work effective April 5, 2020?  
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?  
Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on August 12, 2019 as a part-time delivery driver working Monday through Friday between 10:00 a.m. and 2:00 p.m. In mid-March, the employer closed its business. On or about April 6, the employer called the claimant and offered him hours, which the claimant declined due to concern for his and his wife's health. The claimant returned to work the week of May 17.

The claimant filed his claim for benefits effective April 5, 2020 and his weekly benefit amount is \$334. The claimant's base period includes all four quarters of 2019. During the first three quarters of 2019, the claimant earned full-time wage credits from another employer. He is no longer seeking or willing to work full-time as he is semi-retired.

The claimant filed for benefits each week for the eight weeks ending May 30. He did not report any wages earned for the six weeks between April 5 and May 16. The claimant received \$2,004 in regular benefits and \$3,600 in Federal Pandemic Unemployment Compensation (FPUC). For the two weeks ending May 30, the claimant's gross wages were more than his weekly benefit amount plus fifteen dollars and he did not receive any benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

### *I. Is the claimant totally, partially, or temporarily unemployed?*

For the reasons that follow, the administrative law judge concludes that the claimant was not totally, partially, or temporarily unemployed for the two weeks between May 17 and May 30. Benefits for those two weeks are denied. The claimant was totally unemployed during the six weeks between April 5 and May 16; however, benefits are only allowed if he is able to and available for work.

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", 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 Code § 96.19(38) provides:

"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 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.

Under Iowa Employment Security Law, an individual must be totally, partially, or temporarily unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total unemployment occurs when an individual has received no wages and performed no services during any given week. *Id.* Temporary unemployment occurs when an individual is laid off due to a lack of work or various other reasons from no more than four weeks from their full-time employment. In this case, the claimant was not temporarily unemployed because he was not laid off from full-time employment due to a lack of work. However, he is totally unemployed from April 5 through May 16, as he did not work and earn any wages. He will only be eligible for benefits if he is also able to and available for work.

The claimant performed services and earned wages for the two weeks May 30 and cannot be totally or temporarily unemployed those weeks. The next question is whether he was partially unemployed for those two weeks. In order to be partially unemployed, an individual must be laid off from regular full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant returned to his normal hours and earned more than his weekly benefit amount plus fifteen dollars. Therefore, he is not totally, partially, or temporarily unemployed for those weeks and is not eligible for regular benefits.

*II. Was the claimant able to and available for work from April 5 through May 16?*

For the reasons that follow, the administrative law judge finds the claimant was not able to and available for work from April 5 through May 16. Benefits are denied.

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, in relevant part:

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.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. In this case, the claimant cannot establish he was able to and available for work under state law for the six weeks ending May 16. The claimant has primarily full-time hours in his base period and is not willing to seek or work full-time. Additionally, the employer had hours available for the claimant and he elected to take a leave of absence. Accordingly, he is not eligible for regular unemployment benefits.

As benefits are denied, the issue of the chargeability of the employer's account is moot.

*III. Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?*

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment benefits and FPUC for the six weeks ending May 16.

Iowa Code § 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.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(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...

Since the claimant is not eligible for regular unemployment benefits, he was overpaid \$2,004 in regular benefits and \$3,600 in in FPUC during the six weeks ending May 16. The claimant will be required to repay the benefits received unless the Employment Appeal Board reverses this decision on appeal or he is eligible for Pandemic Unemployment Assistance (PUA).

#### **DECISION:**

##### *Regular Unemployment Insurance Benefits Under State Law*

The May 29, 2020, reference 01, unemployment insurance decision is reversed. The claimant was not totally, partially, or temporarily unemployed for the two weeks ending May 30. The claimant was not able to and available for work effective April 5 through May 16. As a result, benefits are denied and he has been overpaid \$2,004 in regular benefits and \$3,600 in FPUC.

##### *Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act*

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. 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 \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the “Note to Claimant” on the last page of the decision.



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Stephanie R. Callahan  
Administrative Law Judge

August 3, 2020  
Decision Dated and Mailed

src/sam

*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 Pandemic Unemployment Assistance (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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.