

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JENNY L HAVEL
Claimant

APPEAL NO: 20A-UI-03755-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED GLASS LLC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Same Hours and Wages
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 26, 2020. The claimant participated in the hearing. Shonna Dean, Human Resources Talent Acquisition, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time customer service representative July 29, 2013, and continues to be employed in that capacity with no change in her hours or wages.

She was also employed as a part-time server/bartender for Cedar Ridge Winery, averaging 20 hours per week, but the winery closed March 17, 2020, due to COVID 19. The claimant returned to work at the winery May 22, 2020.

Despite being denied benefits at the initial fact-finding, the decision was made by Iowa Workforce Development to release funds of the claimants while their appeals were pending due to the backlog in appeals caused by the recent COVID 19 outbreak. The claimant was one of the individuals whose funds were released pending appeal. The administrative record shows the claimant filed for and received a total of \$3,108.00 in unemployment insurance benefits for the six weeks ending April 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is still employed at the same hours and wages as contemplated in the original contract of hire at her full-time job and is consequently not considered able and available for work.

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. 871-24.23(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 full-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.

The claimant was hired as a full-time customer service representative. There has been no separation from her full-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in the original contract of hire. The claimant is disqualified from receiving benefits based on her full-time employment.

In order to be eligible for Federal Pandemic Unemployment Compensation, the claimant must be eligible for at least \$1.00 in regular benefits, Pandemic Emergency Unemployment Compensation (PEUC); Pandemic Unemployment Assistance (PUA); Extended Benefits (EB); Short Time Compensation (STC), Trade Readjustment Act (TRA); Disaster Unemployment Assistance (DUA); and payments under the Self-Employment Assistance (SEA) program.

As the claimant has been receiving benefits, pending a determination on her appeal, the next issue in this case is whether the claimant was overpaid unemployment insurance 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.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$3,108.00 in unemployment insurance benefits for the six weeks ending April 25, 2020.

The final issue is whether the claimant is overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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 \$600.00 (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 the claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits the claimant received, she also received an additional \$2,400.00 in Federal Pandemic Unemployment Compensation benefits for the four weeks ending April 29, 2020. The claimant is required to repay those benefits as well.

DECISION:

The April 30, 2020, reference 01, decision is affirmed. The claimant is still employed at the same hours and wages as in her original contract of hire and therefore is not qualified for benefits based on her full-time employment. The employer's account is not subject to charge based on her full-time employment. The claimant is overpaid regular unemployment insurance benefits in the amount of \$3,108.00 for the six weeks ending April 25, 2020. She is also overpaid Federal Pandemic Unemployment Compensation in the amount of \$2,400.00 for four weeks ending April 29, 2020.



Julie Elder
Administrative Law Judge

May 28, 2020
Decision Dated and Mailed

je/mh