

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUNETHA JOHNSON
Claimant

STEENA CO LLC
Employer

APPEAL 20A-UI-03169-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (2)

Section 96.19-38-a & b – Total and Partial Unemployment Iowa Code § 96.3-7 – Overpayment
Iowa Code § 96.4-3 – Able and Available
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation
871 IAC 24.23(26) –
Section 96.7-2-a(2) – Same Base Period Employment
871 IAC 24.22(2)f – Part-Time Worker – Able and Available
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Steen (employer) appealed a representative's April 10, 2020, decision (reference 02) that concluded Lunetha Johnson (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Cara Van Steenis, Owner.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

Whether the claimant is partially unemployed and the employer is relieved of benefit charges, whether the claimant was able and available for work, whether the claimant was overpaid benefits, and whether the claimant was overpaid Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 20, 2019, as a part-time crew person. She generally worked the register at the counter. When the store changed its working routine for the pandemic, the claimant worked the register at the counter for walk-in customers. She did not complain about her work duties. The claimant worked her regular hours at her regular wages.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$199.00. The claimant received unemployment insurance benefits and was paid wages by the employer over a seven-week period.

For the week ending March 21, 2020, she received \$199.00 in unemployment insurance benefits. For the week ending March 28, 2020, she received \$153.00 in unemployment insurance benefits. The employer paid her \$224.40 in wages for this period while the claimant reported \$105.00 in wages from the employer. The employer did not reduce the claimant's hours or wages.

For the week ending April 4, 2020, she received \$180.00 in unemployment insurance benefits. For the week ending April 11, 2020, she received \$199.00 in unemployment insurance benefits. The employer paid her \$181.87 in wages for this period while the claimant reported \$68.00 in wages from the employer.

For the week ending April 18, 2020, she received \$00.00 in unemployment insurance benefits. For the week ending April 25, 2020, she received \$128.00 in unemployment insurance benefits. The employer paid her \$123.42 in wages for this period while the claimant reported \$1,019.00 in wages from the employer. On April 13, 2020, the claimant provided a note from her doctor indicating she could only work four hour shifts and could only work 15-20 hours per week. The employer accommodated the claimant's restrictions.

For the week ending May 2, 2020, she received \$138.00 in unemployment insurance benefits. The claimant has not filed her claim for the week ending May 9, 2020, yet. The employer paid her \$123.42 in wages for this period while the claimant reported \$110.00 in wages from the employer for the week ending May 2, 2020.

On May 4, 2020, the claimant sent a text message to the store manager. She said she did not want to be on the schedule anymore until either the store was fully open or the pain specialist gave the claimant something for her pain. The claimant indicated she could barely walk.

This is a total of \$997.00 in state unemployment insurance benefits after the claimant filed for unemployment insurance benefits. She also received \$2,400.00 in federal pandemic unemployment compensation for the period between March 29, 2020, and May 2, 2020, for the weeks she received unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

Iowa Code section 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.

The claimant cannot be considered partially unemployed under the definition of the law because she was not a full-time worker working reduced hours. The claimant did not participate in the hearing and provide evidence that she was separated from her regular job or separated from a full-time job due to lack of work. When she worked for the employer, the employer provided her with her normal hours and wages. The employer did not reduce her hours, the claimant reduced her hours. The claimant does not have enough other earnings in her base-period wages to be monetarily eligible. Benefits are denied.

Next is whether the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant told the employer she is unable to work due to a medical condition as of May 4, 2020. She is considered to be unavailable for work as of May 3, 2020. The claimant is disqualified from receiving unemployment insurance benefits beginning May 3, 2020.

The administrative law judge concludes the claimant is overpaid unemployment insurance benefits.

Iowa Code section 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 claimant received \$997.00 per week in unemployment insurance benefits from March 15, 2020, to May 2, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code Section 96.3-7 for that period.

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 (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...

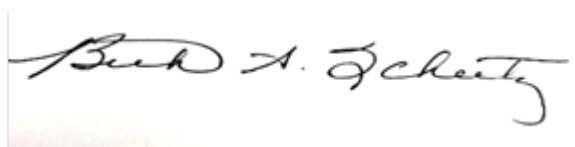
The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$2,400.00 in Federal Pandemic Unemployment Compensation from March 29, 2020 through May 2, 2020. The claimant is required to repay those benefits as well.

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 due to disqualifying separations, 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>.

DECISION:

The claimant was not partially unemployed. As of May 3, 2020, the claimant is not available for work. The claimant is overpaid unemployment insurance benefits of \$997.00 from March 15, 2020 through May 2, 2020. The claimant is overpaid Federal Pandemic Unemployment Compensation of \$2,400.00 from March 29, 2020 through May 2, 2020.



Beth A. Scheetz
Administrative Law Judge

May 13, 2020
Decision Dated and Mailed

bas/scn