

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMMA A KIMMEL
Claimant

J&D RESTAURANTS INC
Employer

APPEAL 20A-UI-05299-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On June 4, 2020, the claimant filed an appeal from the May 27, 2020, (reference 04) unemployment insurance decision that denied benefits for the week ending May 2, 2020, due to claimant's unavailability for work. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2020. Claimant participated personally and through witnesses Linda Alvarez-Jones and Cameron Danilson. Employer participated through office manager Allison McAninch.

ISSUES:

Is the claimant able to and available for work?
Was the claimant overpaid unemployment insurance benefits?
Is the claimant eligible for Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 14, 2020. Claimant last worked as a part-time crew member. Claimant was separated from employment on May 22, 2020, when she resigned.

Employer hired claimant to work days. Claimant's car broke down and she did not have daytime transportation. Claimant informed employer she could not work during the day. Employer continued to schedule claimant for daytime hours.

On March 7, 2020, claimant told a manager she was only available to work nights or weekends and not during the day. The manager told claimant they did not have hours available for her and they would call her when they needed her.

On March 24, 2020, claimant and her boyfriend talked to general manager, Kim, who told them that everyone's hours had been cut due to COVID, but that she was going to try to give everyone hours and rearrange the schedule. Claimant was not assigned to work any hours.

Claimant filed a claim for unemployment insurance benefits with an effective date of April 5, 2020. On April 10, 2020, employer protested on the basis that claimant voluntarily resigned from employment on March 7, 2020.

On May 1, 2020, a manager, Katelyn, called claimant and asked her to work. Claimant worked the next day, on May 2, 2020.

Claimant was not scheduled further hours.

On May 15, 2020, Iowa Workforce Development mailed claimant a notice for a fact finding interview on May 26, 2020. The notice stated that the employer alleged claimant voluntarily resigned.

On May 22, 2020, claimant had a telephone call with the new store manager, Enrique. Enrique told claimant that Katelyn told him that she resigned. Enrique offered claimant hours, but claimant resigned. Claimant told Enrique that she had another job, but she did not. Claimant did not ask if she could transfer to another store.

Since filing this claim, claimant received regular unemployment insurance benefits in the amount of \$661.00 for the six weeks ending May 16, 2020, and Federal Pandemic Unemployment Compensation in the amount of \$3,600.00 for the six weeks ending May 16, 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 96.1A, 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(16) provides:

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

(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.

In this case, employer hired claimant with the expectation she would be able to work daytime hours. Employer did not have nighttime and weekend hours available for claimant. The reason claimant was taken off the schedule was at her request—because she could not work daytime

hours. Claimant limited her availability for work. The evidence does not show that employer did not have daytime work available for claimant.

Benefits are denied from April 5, 2020, until May 22, 2020, based on claimant's unavailability for work.

OVERPAYMENT

Because claimant is not eligible for regular, state-funded unemployment insurance benefits, the next issue is whether she was overpaid benefits prior to the denial decision being issued.

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.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5. . . .

The administrative law judge concludes that the claimant has been overpaid unemployment insurance benefits in the amount of \$661.00 for the six weeks ending May 16, 2020.

The administrative law judge additionally concludes claimant has been overpaid Federal Pandemic Unemployment Compensation.

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 (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC) at this time. In addition to the regular UI benefits claimant received, she also received an additional \$3,600.00 for the six weeks ending May 16, 2020. Claimant is required to repay those benefits.

DECISION:

The May 27, 2020, (reference 04) unemployment insurance decision is modified in favor employer. Claimant was not able to and available for work effective April 5, 2020. Benefits are denied. Claimant was overpaid regular unemployment insurance benefits in the amount of \$661.00 and FPUC benefits in the amount of \$3,600.00. Claimant is required to repay the benefits.



Christine A. Louis
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Unemployment Insurance Appeals Bureau
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July 22, 2020
Decision Dated and Mailed

cal/mh

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>.