

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNIE N CERRETTI

Claimant

LUTHERAN SERVICES IN IOWA INC

Employer

APPEAL 20R-UI-09298-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20

Claimant: Appellant (5)

Iowa Code § 96.19(38) – Total, partial unemployment

Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search

STATEMENT OF THE CASE:

On June 4, 2020, Connie Cerretti (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated June 2, 2020 (reference 02) that denied benefits based on a finding claimant was still employed by employer for the same hours and wages as in the original contract of hire and was therefore not partially unemployed.

A telephone hearing was set for July 9, 2020. Claimant failed to provide a telephone number at which she could be reached for the hearing. No hearing was held and a default order was entered on July 17, 2020.

Claimant appealed to the Employment Appeal Board (EAB). The EAB remanded for a new hearing. A hearing was set for September 21, 2020. The parties were properly notified of the hearing. Claimant participated personally. Lutheran Services in Iowa Inc. (employer/respondent) participated by Community Based ESL Supervisor John Windheuser.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Is the claimant able to and available for work?
- III. Is the claimant still employed at the same hours and wages? Is the employer's account subject to charge? Is the claimant an on-call worker?
- IV. Was the claimant overpaid benefits?
- V. 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 began working for employer on February 14, 2019. Claimant is still employed by employer as a substitute ESL teacher. In this position, substitute positions are offered to claimant and she is free to accept or reject them. Claimant last performed work for employer on December 12, 2019. There was a period where fewer substitute opportunities were available, due to the pandemic. There is substitute work available now. However, the work is all remote, which claimant has difficulty with.

Claimant's regular employment is with Urbandale Community Schools. Claimant works 28.75 hours per week there as an associate teacher. Her gross earnings are \$671.57 biweekly, or \$335.79 per week. The school where claimant worked closed in mid-March due to the pandemic but she continued to be paid her regular salary until the school year ended at the beginning of June.

In the past, claimant has worked for Lowe's during the summertime. However, claimant was not able to perform work after having surgery for April and recovering from that through the summer. Claimant returned to her regular employment with Urbandale Schools on August 23, 2020.

Claimant filed a weekly claim each week from the benefit week ending April 4, 2020 and continuing through the benefit week ending June 27, 2020. Claimant reported no wages in any of those weeks except for reporting \$485.00 in vacation pay for the benefit week ending June 27, 2020. Claimant's weekly benefit amount is \$273.00.

The unemployment insurance system shows claimant has received weekly benefits in the amount of \$273.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of benefits paid to date is \$2,184.00.

The unemployment insurance system shows claimant has received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$600.00 for a total of eight weeks, from the benefit week ending April 4, 2020 and continuing through the benefit week ending May 23, 2020. The total amount of FPUC paid to date is \$4,800.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated June 2, 2020 (reference 02) that denied benefits based on a finding claimant was still employed by employer for the same hours and wages as in the original contract of hire and therefore not partially unemployed is MODIFIED with no change in effect. Claimant was not totally, partially, or temporarily unemployed during the period in question and as set forth below and is therefore not eligible for benefits.

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.

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".

Claimant was not totally, partially, or temporarily unemployed during the period in question. From the benefit week ending April 4, 2020 and continuing through the benefit week ending May 30, 2020, Claimant was employed in her regular position with Urbandale Community Schools and earning more than her weekly benefit amount plus \$15.00. After that period and continuing until claimant returned to her usual employment with Urbandale Community Schools, claimant was not able to or available for work because she was recovering from surgery.

While claimant may have lost some work with employer due to the pandemic, this is the nature of on-call employment such as substitute teaching. Claimant was never guaranteed a certain number of hours in this position, and so she has remained employed by employer in the same way during the relevant period. Benefits are denied.

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.

b. (1) (a) 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 section 96.8, subsection 5.

Because the administrative law judge affirms the decision finding claimant ineligible for benefits, the claimant has been overpaid benefits in the amount of \$2,184.00. Benefits shall be recovered. 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.

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...

Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, she is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.

DECISION:

The decision dated June 2, 2020 (reference 02) that denied benefits based on a finding claimant was still employed by employer for the same hours and wages as in the original contract of hire and therefore not partially unemployed is MODIFIED with no change in effect. Claimant was not totally, partially, or temporarily unemployed during the period in question and as set forth below and is therefore not eligible for benefits.

Claimant has been overpaid benefits in the amount of \$2,184.00. Benefits shall be recovered. 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.

Claimant has been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

September 23, 2020
Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.