

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CARLINA R GRAFFT
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL NO. 20A-UI-08652-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment
Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits
Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 21, 2020, reference 04, decision that allowed benefits to the claimant effective May 3, 2020, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was able to work and available for work, but that the employer was not providing the same pattern of employment as existed during the base period. After due notice was issued, a hearing was held on September 3, 2020. Claimant Carlina Grafft did not provide a telephone number for the hearing and did not participate. Elizabeth Soper, Human Resources Specialist, represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A and the July 21, 2020, reference 03, decision.

ISSUES:

Whether the claimant was able to work and available for work during the period of May 3, 2020 through July 25, 2020.
Whether the claimant was partially and/or temporarily unemployed during the period of May 3, 2020 through July 25, 2020.
Whether the claimant was overpaid regular benefits for the period of May 3, 2020 through July 25, 2020.
Whether the claimant was overpaid Federal Pandemic Unemployment Compensation for the period of May 3, 2020 through July 25, 2020.
Whether the employer's account may be charged for benefits for the period of May 3, 2020 through July 25, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carlina Grafft is employed by GrapeTree Medical Staffing, Inc. as a part-time, on-call, Certified

Nursing Assistant (CNA). Ms. Grafft resides in Cedar Rapids. Ms. Grafft established an original claim for benefits that was effective May 3, 2020. GrapeTree is a base period employer. Ms. Grafft made weekly claims for each of the weeks between May 3, 2020 through July 25, 2020. Throughout that time, the employer continued to have the same part-time, on-call, employment available to Ms. Grafft. Throughout that time, the employer repeatedly contacted Ms. Grafft to make her aware of available CNA assignments. For the weeks that ended May 9 and May 16 2020, Ms. Grafft reported wages that exceeded her weekly benefit amount by more than \$15.00. For each of the weeks between May 17, 2020 and July 25, 2020, Ms. Grafft reported wages that were less than her weekly benefit amount. Ms. Grafft received \$1,095.00 in regular benefits for the eight weeks between May 17, 2020 and July 11, 2020. Ms. Grafft received \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits for the eight weeks between May 17, 2020 and July 11, 2020.

On July 21, 2020, an Iowa Workforce Development Benefits deputy entered a reference 03 decision that denied benefits effective May 3, 2020, based on the deputy's conclusion that Ms. Grafft was unduly restricting her availability for work with her primary employer, Marjan Management Service limited/Northbrook Manor. Ms. Grafft did not appeal the reference 03 decision, which became a final agency decision.

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 96.19, 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:

Benefits 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.

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.

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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

Ms. Grafft did not participate in the hearing and did not present any evidence to prove that she was able to work and available for work within the meaning of the law during the period of May 3, 2020 through July 25, 2020. Iowa Workforce Development determined through the July 21, 2020, reference 03, decision that Ms. Grafft was unduly restricting her availability for work and did not meet the availability requirement. The evidence concerning Ms. Grafft's employment relationship with GrapeTree indicates there was no change in the conditions of the employment and that during the period of May 3, 2020 through July 25, 2020, the employer continued to make the same work and wages available to Ms. Grafft as existed in the base

period. The evidence does not establish that Ms. Grafft was at any point partially unemployed or temporarily unemployed from her employment with GrapeTree during the period of May 3, 2020 through July 25, 2020. Ms. Grafft is not eligible for unemployment insurance benefits during the period of May 3, 2020 through July 25, 2020. The employer account of GrapeTree Medical Staffing, Inc. will not be charged for benefits paid to Ms. Grafft for the period of May 3, 2020 through July 25, 2020.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision denies benefits for the period of May 3, 2020 through July 25, 2020, the \$1,095.00 in regular benefits that Ms. Grafft received for the eight weeks between May 17, 2020 and July 11, 2020 are an overpayment of benefits that Ms. Grafft must repay.

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 this decision disqualifies Ms. Grafft for regular unemployment insurance (UI) benefits for the period of May 3, 2020 through July 25, 2020, Ms. Graft is also disqualified for the \$4,800.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits that she received for the eight weeks between May 17, 2020 and July 11, 2020. Ms. Grafft must repay the overpaid FPUC benefits.

DECISION:

The July 21, 2020, reference 04, decision is reversed. The claimant has not demonstrated that she was available for work within the meaning of the law during the period of May 3, 2020 through July 25, 2020. The claimant was not partially unemployed or temporarily unemployed from this employer during the period of May 3, 2020 through July 25, 2020. The claimant is not eligible for unemployment insurance benefits for the period of May 3, 2020 through July 25, 2020. This employer's account will not be charged for benefits for the period of May 3, 2020 through July 25, 2020. The claimant is overpaid \$1,095.00 in regular benefits for the period of May 17, 2020 through July 11, 2020. The claimant is overpaid \$4,800.00 in FPUC benefits for the period of May 17, 2020 through July 11, 2020. The claimant must repay the overpaid regular benefits and FPUC benefits.



James E. Timberland
Administrative Law Judge

October 14, 2020
Decision Dated and Mailed

jet/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**