

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**WILLIE C LEWIS**  
Claimant

**CENTRAL IOWA KFC INC**  
Employer

**APPEAL NO. 20A-UI-08579-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications  
Iowa Code § 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 16, 2020, reference 01, decision that allowed benefits to the claimant for the period beginning March 22, 2020, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on September 1, 2020. Claimant Willie Lewis participated. Julie Mangold, Area Coach, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant on a voluntary leave of absence?  
Is the claimant overpaid regular benefits?  
Is the claimant overpaid Federal Pandemic Unemployment Compensation?  
May the employer's account be charged for benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Willie Lewis established an original claim for benefits that was effective March 22, 2020. Central Iowa KFC is the sole base period employer in connection with the claim. Iowa Workforce Development set his weekly benefit amount for regular benefits at \$126.00. By the time of the September 1, 2020 appeal hearing, Mr. Lewis had made weekly claims for 21 consecutive weeks between March 22, 2020 and August 15, 2020 and received \$2,658.00 in regular benefits for that period. Mr. Lewis also received \$10,200.00 in Federal Pandemic Unemployment Compensation (FPUC) for the period of March 29, 2020 through July 25, 2020.

Mr. Lewis is employed by Central Iowa KFC, Inc. as a part-time customer service team member. Mr. Lewis began his employment in 2018 and generally worked about 20 hours per week. As of

January 2020, his wage is \$9.50 per hour. Mr. Lewis last performed for the employer on March 16, 2020. Effective March 17, 2020, Mr. Lewis commenced an approved medical leave of absence. Mr. Lewis provided the employer with a medical note from his nurse practitioner that indicated he needed to be off work until further notice due to his health condition placing him at high risk in connection with COVID-19. Mr. Lewis is 69 years old and has a chronic lung condition that places him at increased risk in the event he contracts COVID-19. While the employer had continued to have work for Mr. Lewis, Mr. Lewis's primary health care provider has not yet released him to return to the employment.

### **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(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Here, claimant is on a leave of absence due to being high risk for COVID 19. Claimant has not established that he is able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim. The employer's account shall not be charged for benefits paid for the period beginning March 22, 2020.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Iowa 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 regular state benefits for the period beginning March 22, 2020, the \$2,658.00 in regular benefits that Mr. Lewis received for the period of March 22, 2020 through August 15, 2020 is an overpayment of benefits that must be repaid.

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, the claimant is also disqualified from receiving Federal Pandemic Unemployment Compensation (FPUC). The \$10,200.00 in FPUC benefits the claimant received for the period of March 29, 2020 through July 25, 2020 constitutes an overpayment of benefits. Claimant is required to repay those benefits.

**DECISION:**

The July 16, 2020, reference 01, decision is reversed. The claimant has not been able to work and available for work since establishing his claim for benefits. Accordingly, the claimant is not eligible for regular, state-funded unemployment insurance benefits for the period beginning March 22, 2020. Claimant may be eligible for Pandemic Unemployment Assistance. The claimant is overpaid the \$2,658.00 in regular benefits for the period of March 22, 2020 through August 15, 2020. The claimant is overpaid \$10,200.00 in FPUC benefits for the period of March 29, 2020 through July 25, 2020. The claimant must repay the overpaid regular and FPUC benefits.



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James E. Timberland  
Administrative Law Judge

September 11, 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 will be required to repay the benefits you've received so far.**