

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANDREA FLORES DE ALEMAN**  
Claimant

**WEST LIBERTY FOODS LLC**  
Employer

**APPEAL 20A-UI-09059-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (1R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

Andrea Flores de Aleman (claimant) appealed a representative's July 21, 2020, decision (reference 01) that denied benefits based on her employment with West Liberty Foods (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2020. The claimant participated personally through the aid of Interpreters 12993, 9844, and 12919. Her daughter, Violeta Aleman participated in the hearing. The employer participated by Nikki Bruno, Human Resources Manager. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**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 May 31, 1999, as a full-time general laborer. For the two-week period from April 13, 2020, through April 24, 2020, the employer needed to shut down one line. It took volunteers who wished to be furloughed, starting with those workers with the most seniority. The claimant chose to be furloughed from April 13, 2020, through April 24, 2020.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$452.00. The claimant received benefits of \$452.00 per week from April 12, 2020, to the week ending April 25, 2020. This is a total of \$904.00 in state unemployment insurance benefits after the separation from employment. She also received \$1,200.00 in Federal Pandemic Unemployment Compensation for the two-week period ending April 25, 2020.

## REASONING AND CONCLUSIONS OF LAW:

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 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.

When a worker is unemployed for four weeks or less, she is considered to be temporarily unemployed. The claimant was unemployed for two weeks. She may be considered to be temporarily unemployed. The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees request and are granted time off, they are considered to be unavailable for work. The employer gave the claimant the option and the claimant requested a reduction of hours. The employer granted the request. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from April 5, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

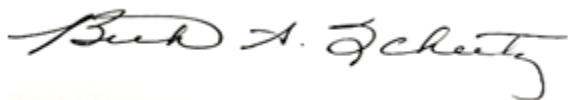
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The July 21, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 5, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*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, 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>.



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Beth A. Scheetz  
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September 22, 2020  
Decision Dated and Mailed

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