

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALBERT F LERMA
Claimant

SEDONA STAFFING INC
Employer

APPEAL 20A-UI-15331-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/22/19
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)B – Total, Partial, and Temporary Unemployment
Iowa Code § 96.3(7) – Overpayment of Benefits
PL 116-136 Section 2104(B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 10, 2020 (reference 03) unemployment insurance decision that found claimant was eligible for unemployment benefits as he was still working part-time or on call. The parties were properly notified of the hearing. A telephone hearing was held on January 19, 2021. The claimant did not participate. The employer participated through witness Colleen McGuinty. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant eligible for total, partial, or temporary unemployment benefits?
Is the claimant able to and available for work?
Is the claimant overpaid benefits?
Is the claimant overpaid Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant started working for this employer as a temporary employee beginning on October 14, 2019. His last job placement was at Raymond Corporation. He was working full-time as a material mover.

Claimant's administrative records establish that he filed an initial claim for unemployment insurance benefits effective September 22, 2019 with an additional claim date of August 30, 2020. Claimant filed one weekly-continued claim from August 30, 2020 through September 5, 2020. He was paid \$433.00 in regular unemployment insurance benefits for the one-week period ending September 5, 2020. Claimant did not receive any Federal Pandemic Unemployment Compensation benefits.

During the week of August 30, 2020 through September 5, 2020 the claimant was off of work due to a possible exposure to COVID 19. He was tested and his results were negative. He returned to work after his negative test results. He was only off of work for three days that week; September 1, 2, and 3, 2020 due to the illness and exposure. There was no short-term

layoff due to lack of production. There was continuing work if the claimant was able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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", 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 Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

In this case, the claimant was not on a short-term layoff as there was work available for him. He was unemployed because he was on a COVID 19 quarantine leave. As such, he was not able to and available for work for the one-week period of August 30, 2020 through September 5, 2020. Regular unemployment insurance benefits funded by the State of Iowa are denied effective August 30, 2020 through September 5, 2020 due to the claimant not being able to and available for work. Because benefits are denied, the issues of overpayment of benefits must be addressed.

Iowa Code § 96.3(7)a-b, as amended in 2008, provides:

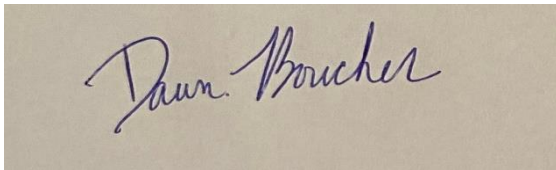
7. Recovery of overpayment of benefits.
 - a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for those benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits but has been subsequently determined to be ineligible for those benefits. As such, the claimant is overpaid regular unemployment insurance benefits funded by the State of Iowa of \$433.00 from August 30, 2020 through September 5, 2020 and must repay the agency those benefits. The claimant was not paid Federal Pandemic Unemployment Compensation benefits and the overpayment issue of FPUC benefits is moot.

DECISION:

The November 10, 2020 (reference 03) decision is reversed. Claimant was not able to and available for work. Regular unemployment insurance benefits funded by the State of Iowa are denied effective August 30, 2020 through September 5, 2020.

The claimant has been overpaid regular unemployment insurance benefits of \$433.00 for the one-week period beginning August 30, 2020 and ending September 5, 2020 and is obligated to repay the agency those benefits.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

February 5, 2021
Decision Dated and Mailed

db/mh

Note to Claimant

- This decision determines you are not eligible for regular unemployment insurance benefits funded by the State of Iowa 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 funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**
For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.