

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE M FOLSOM

Claimant

CARING HEARTS HOME CARE INC

Employer

APPEAL 20A-UI-04585-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Respondent (2)

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 § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Caring Hearts Home Care (employer) appealed a representative's May 14, 2020, decision (reference 01) that concluded Michelle Folsom (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2020. The claimant participated personally. The employer participated by Susan Schaeuble, Owner.

The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibits One and Two were received into evidence. 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 January 9, 2019, as a part-time care giver. The employer does not guarantee hours. In addition, the claimant had limitations on her hours due to a medical condition.

During January, February, and March 2020, the claimant was earning \$500.00 to \$600.00 per week. Her hourly rate of pay was \$13.00. During the week ending March 21, 2020, the claimant hoped to have a new client for that week only. The client's family had a change of heart and decided to care for the family member themselves. The claimant filed for

unemployment insurance benefits with an effect date of March 15, 2020. Her weekly benefit amount was calculated to be \$278.00.

The claimant worked seventeen hours the week ending March 21, 2020, and reported \$221.00 in earnings. She received \$126.00 in partial benefits. For the week ending March 28, 2020, the claimant reported \$325.00 in earnings and received no unemployment insurance benefits.

On March 30, 2020, the claimant worked eight hours. She had cold and flu-like symptoms toward the end of her shift. She used precautions and washed her hands frequently. On March 31, 2020, the claimant called the employer and said she had Covid-19 symptoms. At that time, the employer understood that the claimant should stay home until she had no fever for seventy-two hours. It told the claimant to keep in touch.

On April 2, 2020, the employer sent the claimant a text asking how she was feeling. The claimant responded that she was sneezing and using nasal spray. The employer asked the claimant if she could be scheduled the following week. The claimant said she would let the employer know the next day. The claimant did not contact the employer the next day. She filed a claim for the week ending April 4, 2020. The claimant earned \$104.00 that week but she reported no earnings to the department.

On April 9, 2020, the employer sent the claimant a text asking the claimant how she was feeling. The claimant said she was battling cold symptoms and isolating. The employer told the claimant to see a doctor or have a medical excuse for her absence. The claimant did not respond to the employer.

On April 13, 2020, the claimant sent the employer a text saying she would return to work when she was symptom free and the "governor gives the all clear". She told the employer it was not possible for her to see a doctor unless it was an emergency. She said, "I'm staying home to keep myself and clients free of any illnesses."

On April 24, 2020, the claimant signed a Covid-19 document stating "I will immediately contact Caring Hearts Home Care if I become ill or develop any symptoms. I will keep in close communication with CHHC and my health care provider during this time. I agree to follow doctors' orders and CDC guidelines regarding self-isolation and when will be able to return to work".

On May 11, 2020, the claimant emailed the employer stating she expected to be off for two more weeks with cold and flu-like symptoms. On May 22, 2020, the claimant sent an email to the employer saying she was exposed to someone else who was "very ill". The claimant was clearing up cough symptoms and waiting to make sure she was not affected.

The claimant understood that the employer wanted her to be tested or get a note from her doctor before she returned to work. The claimant does not want to be tested or see a physician. She is self-diagnosed with Covid-19 from March 30, 2020, through June 15, 2020, and feels she is unable to work.

For the ten-week period ending June 6, 2020, the claimant received \$278.00 each week in unemployment insurance benefits. She received a total of \$2,906.00 in unemployment insurance benefits from March 15, 2020, through June 6, 2020. She also received \$6,000.00 in Federal Pandemic Unemployment Compensation from March 29, 2020, through June 6, 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.

With regard to the week ending March 21, 2020, the claimant was still working part-time for the employer at the same hours and wages as was contemplated when she was hired. She cannot be deemed partial unemployed for this week because she was not a full-time worker and she was not separated from the employer. She is not eligible to receive unemployment insurance benefits for the week ending March 21, 2020.

Moving on to the week ending March 28, 2020, the claimant was still working for the employer earning more than her weekly benefit amount (\$278.00) plus \$15.00. The claimant was not eligible to receive unemployment insurance benefits for the week ending March 28, 2020.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish she is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant is totally unemployed for the ten-week period ending June 6, 2020. As of March 29, 2020, the issue is whether she is able to and available for work.

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, employer has work available for claimant. However, claimant informed employer she was unable to work due to a self-diagnosis of Covid-19 from March 30, 2020, to June 15, 2020. The employer agreed to allow the claimant time off for that reason. The claimant has not established she 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.

Claimant is considered to be on a leave of absence and is not available for work. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though 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. Claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

The next issue is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 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 claimant received \$2,906.00 in unemployment insurance benefits from March 15, 2020, to June 6, 2020. This was during the period of time the claimant has been determined to be ineligible to receive benefits. The claimant was overpaid unemployment insurance benefits pursuant to Iowa Code Section 96.3-7 for that period.

The final issue is whether the claimant is eligible for or overpaid Federal Pandemic Unemployment Compensation. The administrative law judge finds that she is overpaid those benefits.

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...

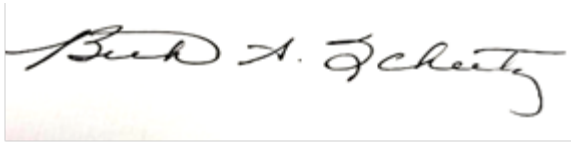
The claimant has been disqualified from receiving regular unemployment insurance benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation. In addition to the regular unemployment insurance benefits, the claimant received an additional \$6,000.00 in Federal Pandemic Unemployment Compensation from March 29, 2020 through June 6, 2020. The claimant is required to repay those benefits as well. Because claimant is disqualified from receiving UI, he is also disqualified from receiving FPUC.

DECISION:

The May 14, 2020, (reference 01) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective March 15, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time claimant is able to and available for work.

The claimant is overpaid unemployment insurance benefits of \$2,906.00 and Federal Pandemic Unemployment Compensation of \$6,000.00.

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 due to disqualifying separations, 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>.



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

June 26, 2020
Decision Dated and Mailed

bas/scn

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