

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SAMANTHA GAHMAN**  
Claimant

**NATIONWIDE MUTUAL INSURANCE CO**  
Employer

**APPEAL 20A-UI-03973-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

---

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.24.23(26) – Same Hours and Wages – Still Employed  
871 IAC 24.23(10) – Voluntary Leave of Absence

**STATEMENT OF THE CASE:**

Samantha Gahman (claimant) appealed a representative's May 6, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was still working for Nationwide Mutual Insurance (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 29, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant is able and available for work, whether the claimant was overpaid benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**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 in November 2016, as a full-time commercial insurance analyst. The claimant suffered back pain. She requested and was granted Intermittent Family Medical Leave (FMLA). In December 2019, the claimant requested to reduce her hours to part-time due to her back pain. She worked about nineteen hours per week.

On or about March 13, 2020, the employer moved the claimant's office to her home. The claimant did not have sufficient equipment at home for her to work without aggravating her back condition. She asked her supervisor if she could return to the office for equipment. She did not make the request to human resources or give a reason for the need for the equipment. The employer denied her request.

The claimant filed her claim for unemployment insurance benefits with an effective date of March 15, 2020, after her employment at Famous Dave's Ribs ended due to the pandemic. Her weekly benefit amount (WBA) was determined to be \$460.00. The claimant filed her weekly claims and did not know she was supposed to report her income from the employer.

For the seven-week period ending May 2, 2020, the claimant reported she had no earnings. For each of those seven weeks she received her WBA. She received a total of \$3,220.00 in unemployment insurance benefits. She also received \$3,000.00 in federal pandemic unemployment compensation for the five-week period ending May 2, 2020.

For the two-week period ending March 22, 2020, the claimant's gross earnings were actually \$265.12. For the two-week period ending April 5, 2020, the claimant's gross earnings were \$178.12. For the two-week period ending April 19, 2020, the claimant's gross earnings were \$120.05. For the two-week period ending May 3, 2020, the claimant's gross earnings were \$69.38. For the two-week period ending May 17, 2020, the claimant's gross earnings were \$91.12.

The claimant worked reduced hours due to FMLA and then stopped working after May 20, 2020. She did receive some paid time off after her last day. The claimant is on FMLA at this time due to her back pain. She is not working her regular hours.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The request may be from the worker or from a physician and delivered to the employer by the worker. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits from March 15, 2020.

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 \$3,220 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 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 \$3,000.00 in Federal Pandemic Unemployment Compensation. The claimant is required to repay those benefits as well.

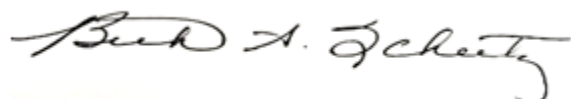
*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for 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>.

**DECISION:**

The representative's May 6, 2020, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from March 15, 2020. She is overpaid \$3,220.00 in unemployment insurance benefits and \$3,000.00 in Federal Pandemic Unemployment Compensation.

Should circumstances change and the disqualification can be removed, notification should be made to the local workforce development center.



---

Beth A. Scheetz  
Administrative Law Judge

June 12, 2020  
Decision Dated and Mailed

bas/sam