

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VIRGINIA L THRAEN
Claimant

APPEAL 21A-UI-18092-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMMONWEALTH ELECTRIC CO OF THE
M**
Employer

**OC: 05/16/20
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Commonwealth Electric Co of the M., the employer/appellant, filed an appeal from the August 6, 2021, (reference 03) unemployment insurance decision that allowed benefits as of May 16, 2021. The parties were properly notified of the hearing. A telephone hearing was held on October 8, 2021. The employer participated through Kelsey Drexel, payroll manager. Ms. Thraen participated and testified. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 was admitted as evidence. The parties waived notice as to the issues of same hours and wages and recovery of benefit overpayment.

ISSUES:

Is Ms. Thraen able to and available for work?
Is Ms. Thraen temporarily or partially unemployed?
If so, is the employer's account subject to charge?
Is Ms. Thraen on a leave of absence?
Was Ms. Thraen overpaid Federal Pandemic Unemployment Compensation (FPUC) benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Thraen began working for the employer on February 16, 2021. She works as a full-time apprentice electrician. She is employer with the employer through a contract with her union. The agreement between the employer and the union provides that Ms. Thraen will attend training at certain times, and not be paid by the employer for those trainings. Ms. Thraen must attend the trainings to remain as an apprentice.

Ms. Thraen attended training the week of May 16-22, 2021. The employer did not pay Ms. Thraen for this week. The employer had work available for Ms. Thraen this week if she had not attended trainings. Ms. Thraen remains employed by the employer.

Ms. Thraen has received \$425.00 in REGULAR unemployment insurance (UI) benefits for one week – the week ending May 22, 2021. Ms. Thraen has received \$0.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and she has received \$300.00 in Lost Wage Assistance Payments (LWAP) for one week – the week ending May 22, 2021.

The employer did not participate in the fact-finding interview. Ms. Drexel testified that she believes the employer participated in the fact-finding interview. However, the administrative record (KFFV screen) shows that the employer did not participate.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Thraen was on a leave of absence the week of May 16-22, 2021.

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 96.1A(37) 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(10) and (26) 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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Ms. Thraen was on an agreed to leave of absence the week of May 16-22, 2021. Ms. Thraen is in an apprenticeship program and understands that to be in the program she will need occasional time off work to attend trainings. Ms. Thraen submitted herself to the program by choosing to start work in the apprenticeship program. The employer and Ms. Thraen's representative, the union, agreed that Ms. Thraen would be on leave to attend training but the employer would not pay her. It is understandable that Ms. Thraen would take steps to get paid for the week she was in training. However, since she was not on a leave of absence the week of May 16-22, 2021, regular, state-funded unemployment insurance benefits are denied for that week.

The administrative law judge further concludes Ms. Thraen has been overpaid REGULAR UI benefits in the amount of \$425.00, and she has not been overpaid FPUC benefits.

Iowa Code §96.3(7) provides, in pertinent part:

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.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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...

Ms. Thraen has been overpaid REGULAR UI benefits in the amount of \$425.00 as she was not qualified and/or was ineligible to receive REGULAR UI benefits. However, since the employer did not participate in the fact-finding interview, she is not required to repay these benefits.

Ms. Thraen did not receive any FPUC benefits. Therefore, she has not been overpaid FPUC benefits.

DECISION:

The August 6, 2021 (reference 03) unemployment insurance decision is modified in favor of the employer. Ms. Thraen was a leave of absence the week of May 16-22, 2021. Regular, state-funded unemployment insurance benefits are denied for this week.

Ms. Thraen has been overpaid REGULAR UI benefits in the amount of \$425.00, but she is not required to repay these benefits since the employer did not participate in the fact-finding interview.

Ms. Thraen has not been overpaid FPUC benefits.



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October 13, 2021
Decision Dated and Mailed

dz/mh