

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CHANDA HALVORSON

Claimant

APPEAL NO. 20A-UI-07875-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIGITAL DOG POUND INC

Employer

OC: 03/22/20

Claimant: Respondent (2R)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.7(2)A(2) – Partial Benefits

Iowa Code § 96.19(38) – Total and Partial Unemployment

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 14, 2020, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 28, 2020. Claimant participated personally. Employer participated by Amy Schneider.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

Whether claimant has been overpaid state unemployment benefits?

Whether claimant is eligible to receive Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

The claimant previously worked for employer on a full time basis. This employment was set to end on March 27, 2020. After that time, there were negotiations between the parties that claimant might work part time in another location. These discussions never yielded actual work for claimant. Employer was shut down on March 26, 2020 by the governor's Covid actions.

Claimant started working for a Kawasaki dealer in the same area as she'd been working within a week of claimant's job ending with employer. Claimant stated that she filed for unemployment

for the week off from work in late March because she was ill and couldn't work. Claimant additionally stated she filed for one other week during her filing period because she was ill that week also.

Claimant claimed weekly claims through the time from late March through July, 2020. During these weeks, she never claimed an amount that would disallow state or FPUC benefits. Claimant stated that she was instructed to file in this manner by an IWD employee.

Claimant has received state unemployment benefits in this matter of \$2,218.00.

Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$9,600.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not entitled to unemployment benefits as she was not able and available for work because she continued her full time employment with a different employer.

Iowa Code section 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", unnumbered paragraph (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 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 Code section 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.

Claimant in this matter ended her employment with employer such that she could begin new employment with another employer. Benefits are not allowed at this time as claimant was not able and available for work because she was working another job. Claimant and employer were negotiating hiring claimant in another position at different hours than she'd been working, but these negotiations did not yield an agreement. Claimant further stated that the only two weeks when she'd intended to file for unemployment was for two weeks when claimant was ill. As claimant was ill in the weeks when she was filing, she was not able and available for work and therefore is not eligible to receive unemployment benefits. Employer's account is not subject to charge.

Claimant has received state unemployment benefits in this matter of \$2,218.00. Said amount is an overpayment.

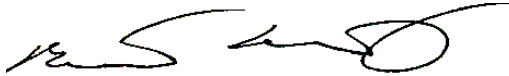
Claimant has received Federal Pandemic Unemployment Compensation benefits in this matter of \$9,600.00. Claimant is not eligible to receive this payment.

This matter is remanded to the benefits bureau as claimant stated she was told to misstate her wages on her weekly reports. Said repeated misstatement of wages resulted in claimant's receipt of state and federal benefits to which she may not be entitled.

DECISION:

The July 14, 2020, reference 01, decision is reversed and remanded to the fact finder and to the benefits bureau. The claimant has not been able and available for work for the weeks filed and is not entitled to benefits.

This matter is remanded to the benefits bureau as claimant stated she was told to misstate her wages on her weekly reports. Said repeated misstatement of wages resulted in claimant's receipt of state and federal benefits to which she may not be entitled.



Blair A. Bennett
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

bab/scn

Note to Claimant: 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. **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>.