

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID W LEATHERMAN
Claimant

WEST DES MOINES COMMUNITY SCH DIS
Employer

APPEAL 20A-UI-08754-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/08/20
Claimant: Respondent (2)

Iowa Code § 96.19(38) – Total, partial unemployment
Iowa Code section 96.4(5)A - Eligibility – Reasonable assurance

STATEMENT OF THE CASE:

On July 29, 2020, West Des Moines Community Sch Dis (employer/appellant) filed a timely appeal from the July 27, 2020 (reference 04) unemployment insurance decision that determined David Leatherman (claimant/respondent) was eligible to receive unemployment insurance benefits beginning March 8, 2020, finding he was unemployed due to a short-term layoff and was able and available for work during the layoff.

A telephone hearing was held on September 8, 2020 at 11:00 a.m. The parties were properly notified of the hearing. Claimant participated personally. Employer participated by HR Substitute HR Director Lynn Ubben. HR Secretary Sandy Donielson participated as a witness for employer.

The parties waived notice on the issue of whether claimant had a reasonable assurance that he would perform services in the coming academic year or term.

Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant totally, partially, or temporarily unemployed?
- II. Did the claimant have reasonable assurance that he would perform services in the coming academic year or term?
- III. Was the claimant overpaid benefits?
- IV. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for employer on October 22, 2018. Claimant is still employed by employer as a bus driver. In this position, claimant works approximately 30 hours per week during the school year. Claimant worked and was paid between March 8 and 14, 2020. Claimant did not work in his usual position during Spring Break, from March 15 through March 21, 2020. Claimant was not performing work for employer but was still being paid his usual wage from March 22 through May 29, 2020, as employer was closed due to the pandemic.

Employer offered summer work to claimant, which he accepted. However, the summer work fell through due to the pandemic. Claimant was not specifically offered to return to work for employer in the fall. However, it was understood that work was available for claimant beginning in the fall unless he specifically declined it. Claimant has returned to work with employer for the new school year beginning August 27, 2020.

Claimant has been paid weekly benefits in the amount of \$351.00 from the benefit week ending June 20, 2020 and continuing through the benefit week ending August 15, 2020. Claimant received benefits in the amount of \$265.00 for the week ending August 22, 2020. The total amount of benefits paid to date is \$3,424.00. Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$4,800.00.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the July 27, 2020 (reference 04) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits beginning March 8, 2020 is REVERSED. Claimant is not eligible for benefits for the reasons set forth below.

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 96.4(5)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

a. Benefits based on service in an instructional, research, or principal administrative capacity in an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or reasonable assurance that the individual will perform services in any such capacity for any educational institution for both such academic years or both such terms.

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

c. With respect to services for an educational institution in any capacity under paragraph "a" or "b", benefits shall not be paid to an individual for any week of unemployment which begins during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before such vacation period or holiday recess, and the individual has reasonable assurance that the individual will perform the services in the period immediately following such vacation period or holiday recess.

d. For purposes of this subsection, "educational service agency" means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and

conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

Claimant is not eligible for benefits from March 8 through 14 and from March 22 through May 29, 2020, as he was not unemployed during that time. He was either working or being paid as normal during those periods. Claimant is not eligible for benefits from March 15 through 21, 2020, as this was an established and customary vacation period or holiday recess.

Claimant is ineligible for benefits from May 30 until the beginning of the next academic year. Benefits are not payable to claimant for any week of unemployment during the period between two successive academic years or terms. This is because claimant is in the employ of an educational institution, worked for employer in the prior academic year or term, and had reasonable assurance that he would perform services in the second such academic year or term. This is true even where, as here, claimant was expecting to perform additional work during the summer and lost that work through no fault of his own.

The administrative law judge notes employer does not dispute claimant's eligibility for benefits during the summer months. However, whether claimant is eligible for benefits depends on the applicable law, not on whether the parties agree benefits should be paid. Here, the applicable law is clear that claimant is not eligible for benefits between academic years or terms. Benefits must therefore be denied.

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 has been paid weekly benefits in the amount of \$351.00 from the benefit week ending June 20, 2020 and continuing through the benefit week ending August 15, 2020. Claimant received benefits in the amount of \$265.00 for the week ending August 22, 2020. The total amount of benefits paid to date is \$3,424.00. Because this administrative law judge now finds claimant was not eligible for benefits, he has been overpaid benefits in the amount of \$3,424.00. Benefits shall be recovered.

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...

Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) in the amount of \$4,800.00. Because the claimant is disqualified from receiving regular unemployment insurance (UI) benefits, he is also disqualified from receiving FPUC. Claimant has therefore been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.

DECISION:

The July 27, 2020 (reference 04) unemployment insurance decision that determined claimant was eligible to receive unemployment insurance benefits beginning March 8, 2020 is REVERSED. Claimant is ineligible for benefits for the reasons set forth above.

Claimant has been overpaid benefits in the amount of \$3,424.00. Benefits shall be recovered. Claimant has been overpaid FPUC in the amount of \$4,800.00. Claimant is required to repay that amount.



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

September 10, 2020
Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits 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.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.