

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN M SCHLEGEL

Claimant

APPEAL 20A-UI-10156-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREMLER FINANCIAL GROUP LLC

Employer

OC: 04/05/20

Claimant: Appellant (1R)

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

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 § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Susan Schlegel (claimant) appealed a representative's August 14, 2020, decision (reference 01) that denied benefits based on her employment with Gremler Financial Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2020. The claimant participated personally. The employer participated by Melissa Smith, Controller.

The claimant offered and Exhibit A was 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 August 22, 2017, as a part-time administrative support person. Her hourly rate of pay was \$18.00. The employer did not guarantee the claimant a certain number of hours. The claimant did not want to work full-time hours and she did not have a second job.

On March 20, 2020, the employer notified the claimant she could no longer come in to the office and could not work from home. Each week she was paid for attending three staff meetings. From April 1, 2020, through April 15, 2020, the claimant grossed \$711.54 in paid time off and wages. From April 16, 2020, through April 30, 2020, the claimant grossed \$65.70 in wages. From May 1, 2020, through May 15, 2020, the claimant grossed \$155.16 in paid time off and wages.

The claimant filed for unemployment insurance benefits on or about April 27, 2020, and the claimant was backdated with an effective date of April 5, 2020. Her weekly benefit amount was determined to be \$304.00. The claimant received benefits of \$304.00 per week from April 5, 2020, to the week ending May 16, 2020. This is a total of \$1,824.00 in state unemployment insurance benefits after the separation from employment. She also received \$3,600.00 in Federal Pandemic Unemployment Compensation for the six-week period ending May 16, 2020. No income was reported for the four-week period ending May 2, 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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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 96.4(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".

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). The claimant was at all times employed and earning wages from the employer. She cannot be considered totally or temporarily unemployed. The issue becomes whether she was partially unemployed. The claimant was hired as a part-time worker with no guarantee of hours.

The claimant was not working a full-time job, so she could not be working "less than the regular full-time week". Therefore, she does not meet the definition of being partially unemployed. The claimant is not eligible to receive unemployment insurance benefits. Benefits are denied as of April 26, 2020.

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

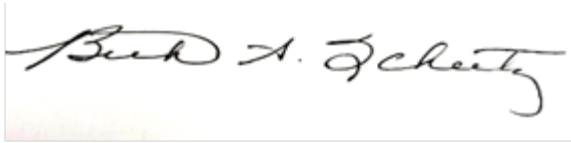
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The August 14, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 26, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

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, 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
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October 8, 2020
Decision Dated and Mailed

bas/scn