

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PAIGE J EMIG**  
Claimant

**LINN COOPERATIVE OIL CO**  
Employer

**APPEAL 20A-UI-09407-JC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/29/20**  
**Claimant: RESPONDENT (4)**

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Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a(2) – Same Base Period Employment  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
PL116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation (FPUC)

**STATEMENT OF THE CASE:**

The employer/appellant, Linn Cooperative Oil Co., filed an appeal from the July 24, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2020. The claimant participated personally. The employer participated through Danielle Maternach, human resources manager.

The administrative law judge took official notice of the administrative records. . Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Does the claimant meet the definition of being considered partially unemployed?  
Is the claimant able to work and available for work effective March 29, 2020?  
If so, is the employer’s account liable for potential charges?  
Is the claimant overpaid benefits?  
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: Employer is an egg producer. Claimant began work in 2018 and works for this employer on a part-time basis at the sale counter.

The employer sent the claimant home from work on March 18, 2020 after learning other co-workers had exposure to COVID-19. Employer knew claimant was high risk due to personal health issues. Claimant did not request to go home. On April 6, 2020, the claimant and employer exchanged text messages about the claimant returning to work. Claimant stated she did not feel comfortable because of her health. She did not raise issues related to safety or lack of PPE. Employer stated that as an egg producer, it always has N-95 masks available for staff

(outside of COVID-19), that it had sanitizer and offered to put a shield up at counters for distancing. Claimant was unaware of these precautions. Claimant remained off work through May 14, 2020. Employer had work available to claimant during this period of time. She returned to work on May 15, 2020 and remains employed.

The administrative record shows, claimant filed for and received a total of \$1,386.00 in unemployment insurance benefits for the weeks between March 29, 2020 and May 12, 2020.

The claimant also received federal unemployment insurance benefits through Federal Pandemic Unemployment Compensation (FPUC). Claimant received \$3,600.00 in federal benefits for the six- week period ending May 12, 2020.

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

For the reasons that follow, the administrative law judge concludes as follows:

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

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.

(emphasis added).

Iowa Admin. Code r. 24.22(2) provides:

Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated **with the consent of both parties**, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

Iowa Admin. Code r. 871-24.23(3) provides:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

**For the period of March 29, 2020 (the beginning of claimant's unemployment insurance claim) through April 5, 2020:**

The credible, undisputed evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Rather, the employer initiated sending the claimant home out of concern, after other employees had contact with individuals testing positive for COVID-19. The claimant did not present any evidence that she was not willing or able to work March 29, 2020 through April 5, 2020. Benefits are allowed for this period, provided the claimant is otherwise eligible.

**Effective April 6, 2020:** While the employer initiated the leave of absence, the leave of absence continued beyond April 5, 2020, because the claimant stated she was uncomfortable returning. The employer had reasonable precautions and PPE available to the claimant. Work was available to the claimant but she placed limits on working.

For a totally unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. The claimant failed to establish she was able to and available for work effective April 6, 2020. Benefits are denied.

*Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he/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.*

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.

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...

As claimant has received benefits to which she was not entitled, she may be overpaid unemployment insurance benefits. Here, the claimant is disqualified from receiving regular unemployment insurance (UI) benefits. Accordingly, this also disqualifies claimant from receiving Federal Pandemic Unemployment Compensation (FPUC). The claimant may have to repay the benefits received thus far, unless the claimant applies and is approved for PUA, as directed in the paragraph below.

**DECISION:**

The unemployment insurance decision dated July 24, 2020, (reference 01) is modified in favor of the employer/appellant.

The claimant was able to and available for work March 29, 2020 through April 5, 2020. She did not request a voluntarily leave of absence. Benefits are allowed for this period, provided the claimant is otherwise eligible.

The claimant is not able and available for work effective April 6, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied.

*The claimant may have to repay state and FPUC benefits received after April 5, 2020, unless the claimant applies and is approved for PUA, as directed below.*

**NOTE TO CLAIMANT:**

This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of 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>.



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September 25, 2020  
Decision Dated and Mailed

jlb/scn