

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DUSTIN L KERSEY
Claimant

APPEAL NO. 20A-UI-12051-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAND ENERGY SOLUTIONS LLC
Employer

OC: 06/07/20
Claimant: Appellant (2R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Dustin Kersey filed a timely appeal from the September 24, 2020, reference 01, decision that denied benefits for the period beginning June 7, 2020, based on the deputy's conclusion that the claimant requested and was approved for a leave of absence, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on November 23, 2020. Mr. Kersey participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of June 7, 2020 through June 27, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of June 7, 2020 through June 27, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dustin Kersey is employed by Brand Energy Solutions, L.L.C. as a full-time scaffolding builder and is assigned to a plant in Clinton, Iowa. Mr. Kersey's usual work hours are 6:30 a.m. to 5:00 p.m., Monday through Friday. Cody Stowers, General Foreman, is Mr. Kersey's primary supervisor.

During Mr. Kersey's shift on Friday, June 5, 2020, Mr. Kersey's wife notified him that her son, Mr. Kersey's step-son, had been exposed to the COVID-19 virus. Mr. Kersey immediately notified the employer of the news. The employer directed Mr. Kersey to leave the worksite immediately and directed him not to return until he had a COVID-19 screening test that indicated he was negative. On Friday, June 5, 2020, Mr. Kersey and his family members underwent COVID-19 screening. On Sunday, June 7, 2020, Mr. Kersey's family received their test results. Mr. Kersey was negative, but his step-son was positive for COVID-19. The Iowa personnel who notified Mr. Kersey of the test result advised the family to quarantine for 10

days. On Sunday, June 7 or Monday, June 8, 2020, Mr. Kersey notified the employer of his negative test result and his step-son's positive test result. The employer notified Mr. Kersey that he would have to quarantine for 14 days. The employer also notified Mr. Kersey that he would have to undergo an additional COVID-19 screening and test negative before he could return to the workplace. Mr. Kersey quarantined as directed. On Thursday, June 25, 2020, Mr. Kersey underwent a second COVID-19 screening and tested negative. Mr. Kersey returned to work on Monday, June 29, 2020. The COVID-19 exposure concern was the only basis for Mr. Kersey being off work. Mr. Kersey remained physically and mentally able to report for work throughout the absence period. Mr. Kersey received no compensation from the employer for his time off.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) 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.

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.

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.

If a claimant 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. Iowa Code section 96.7(2)(a)(2)(a).

The evidence in the record establishes that the claimant was temporarily laid off effective Friday, June 5, 2020, based on the employer desire to prevent potential spread of the COVID-19 virus. The claimant remained off work at the employer's direction until the employer allowed him to return to the employment. The claimant did not request to go off work and did not request a leave of absence. The claimant remained able to work and available for work during the period of temporary unemployment. The claimant is eligible for benefits for the period of June 7, 2020 through July 27, 2020, provided he meets all other eligibility requirements. This matter will be remanded to the Tax Bureau for a determination of whether the charge to the employer's account may be waived in light of the COVID-19 basis for the three-week temporary layoff.

DECISION:

The September 24, 2020, reference 01, decision is reversed. The claimant was able to work, available for work, but temporarily laid off during the period of June 7, 2020 through June 27, 2020 and is eligible for benefits for those three weeks, provided he meets all other eligibility requirements.

This matter is **remanded** to the Tax Bureau for a determination of whether the charge to the employer's account may be waived in light of the COVID-19 basis for the three-week temporary layoff.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

December 4, 2020
Decision Dated and Mailed

jet/mh