IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CALEB D LIMKEMAN Claimant **LOVING ARMS EARLY LEARNING CENTER** Employer	**APPEAL NO. 20A-UI-09485-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/03/20** **Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 2020, reference 01, decision that allowed benefits to the claimant effective May 3, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on September 24, 2020. Claimant Caleb Limkeman participated. Kayla Jordan represented the employer and presented additional testimony through Irena Saric. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A, the August 3, 2020, reference 02, decision, and the September 22, 2020 administrative law judge decision in Appeal Number 20A-UI-09406-SC-T.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning May 3, 2020.
Whether the claimant was partially and/or temporarily unemployed for the period beginning May 3, 2020.
Whether the employer's account may be charged for benefits for the period beginning May 3, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Caleb Limkeman was employed by Loving Arms Early Learning Center as a part-time cook. He began the employment in September 2019 and last performed work for the employer on May 26, 2020. Mr. Limkeman was a full-time college student during the period of the employment. The employer usually accommodated the claimant's class schedule. Mr. Limkeman usually worked 20 hours per week when college was in session. The daycare's hours of operation are 6:00 a.m. to 6:00 p.m., Monday through Friday. Kayla Jordan, Director, was the claimant's supervisor. Mr. Limkeman usually worked from 10:00 a.m. to 2:00 p.m. Mr. Limkeman never worked later than 2:00 p.m., but sometimes worked a shift that started at 8:00 a.m. Mr. Limkeman's wage was $10.50 per hour.

The daycare temporarily shut down in March 2020 due to the COVID-19 pandemic. During that period of temporary layoff, the claimant established an "additional claim" for benefits that was effective March 22, 2020. The additional claim was based on a claim year that began on May 5, 2019 and that ended on May 2, 2020. Mr. Limkeman received unemployment insurance benefits for each week of the temporary layoff.

The daycare reopened on Monday, May 4, 2020. The employer appropriately notified the claimant of the reopen date and of his recall to the employment effective May 4, 2020.

On April 27, 2020, the claimant sent Ms. Jordan a text message in which he stated that he had a mild form of asthma, was concerned about the number of COVID-19 cases in Iowa, and was concerned about returning to the employment, even with precautions in place. Mr. Limkeman requested to delay his return to the employment until May 18, 2020 or later. Ms. Jordan granted the claimant's request to defer his return to the employment.

During the week of May 3-9, 2020, the claimant established a new original claim and new claim year that Iowa Workforce Development deemed effective May 3, 2020. IWD set the claimant's weekly benefit amount for regular benefits at $101.00. Loving Arms is a base period employer in connection with the new claim year.

The daycare had work hours available for the claimant during the weeks that ended May 9 and May 16, 2020, but the claimant did not perform work during those weeks, based on his request to defer his return to the employment. Nonetheless, the claimant filed weekly claims for each week in which he reported that he was able to work, available for work, and had not refused any work.

During the week that ended May 23, 2020, the employer scheduled the claimant to work 8:00 a.m. to 2:00 p.m., Monday through Friday. However, the claimant left at noon each day. Mr. Limkeman worked 20 hours that week for which he earned $210.00. Mr. Limkeman made a weekly claim for the week and reported his wages as $250.00.

During the week that ended May 30, 2020, the daycare was closed on Monday, May 25, 2020 for the Memorial Day holiday, but open for the remainder of the week. Mr. Limkeman worked his scheduled shift on Tuesday, 8:00 a.m. to 2:00 p.m., but requested the three remaining days of the week off and the employer granted the request. Mr. Limkeman made a weekly claim in which he reported that he was able to work and available for work, even though he had taken the majority of the week off.

During the week that ended June 6, 2020, the claimant requested Monday, June 1 off and was scheduled to work 8:00 a.m. to 2:00 p.m. during the remaining four days of the work week. However, on June 1, the claimant notified the employer that a family friend with whom he had recently spent time had tested positive for COVID-19. Mr. Limkeman contacted the University of Iowa Hospitals & Clinics regarding the potential exposure and was advised to quarantine for two weeks. Mr. Limkeman provided the employer with a medical notice in support of his need to be absent due to potential exposure to COVID-19. Mr. Limkeman made a weekly claim for the week in which he stated that he was able to work, available for work, and had not refused any work, even though he was absent for the entire week.

The employer had work for the claimant during the week that ended June 13, 2020, but the claimant did not perform any work for the employer that week due to his need to self-quarantine. Mr. Limkeman again made a weekly claim for the week in which he stated that he was able to

work, available for work, and had not refused any work, even though he was absent for the entire week.

Thereafter, the employer continued to have work for the claimant, but the claimant did not report for work. Instead, the claimant continued to make weekly claims in which he reported that he was able to work, was available for work, and has not refused any work.

During the week that ended June 20, 2020, the employer had work for the claimant, scheduled the claimant to work, but the claimant did not perform any work for the employer. Mr. Limkeman was scheduled to return to work on Monday, June 15, 2020, but did not return to work at that time. An hour before the scheduled start of his shift, the claimant called Ms. Jordan and told her that he had again been exposed to COVID-19 on June 14 and did not know what to do. Ms. Jordan was upset about the further delay in the claimant's return to work. Ms. Jordan told the claimant, "You are a grown man and you need to figure this out." Ms. Jordan told the claimant that when he returned to work, he would be working from 2:00 p.m. Mr. Limkeman had never worked later than 2:00 p.m. At this point, the claimant had an online class with a scheduled time of Monday and Wednesday, from 2:00 p.m. to 3:30 p.m. and had another class that was scheduled to meet on Tuesday from 3:00 p.m. to 6:00 p.m. Mr. Limkeman participated in the classes from home. The nature of the classes was such that the claimant could schedule review of the online content at his leisure and was not required to review the content at the "scheduled time." In other words, there was no bona fide class conflict with the proposed 2:00 p.m. to 6:00 p.m. proposed shift. Mr. Limkeman did not mention a purported conflict with his class schedule during any of his contacts with Ms. Jordan. Ms. Jordan was unaware that the claimant had summer classes. Earlier in the employment, the claimant has expressed interest in working 30 to 40 hours per week during the summer session.

Mr. Limkeman was upset about Ms. Jordan's handling of the June 15, 2020 phone call. On that same day, the claimant wrote to the Loving Arms board of directors. The board consists of parents, is advisory in nature, and is not usually involved in staff issues. Mr. Limkeman wrote that during the last two weeks he had been off work due to the coronavirus. Claimant wrote that he had been planning to return to work that day, but that late the night before claimant got a call from his roommate indicating that the roommate was exposed to the coronavirus. Claimant wrote that he called on June 15 an hour before his shift to speak with Ms. Jordan. Mr. Limkeman wrote that Ms. Jordan had "freaked out" and said "you're just now telling me this, an hour before your shift." Mr. Limkeman wrote that Ms. Jordan told him that she was not firing him, but that when he returned to work he would be working 2:00 p.m. to close. Mr. Limkeman wrote that he was unable to work a 2:00 p.m. to close shift because of school. Mr. Limkeman stated that he did not feel comfortable speaking with Ms. Jordan about anything after the telephone conversation.

On June 16, 2020, a board member responded by email on behalf of the board. The board member said the board would speak with Ms. Jordan and thanked him for his concern about safety. The board member asked whether the claimant had spoken to Ms. Jordan about when he would be returning to work or whether Ms. Jordan had left that for the claimant to decide. On June 16, 2020, the claimant replied and asserted that Ms. Jordan had hung up on him. Claimant stated that he had no symptoms of COVID-19 and asked what the board thought he should do. Mr. Limkeman mentioned his earlier COVID-19 test and the provider's recommendation that he quarantine for two weeks. Mr. Limkeman stated that he expected to receive the same instructions. Mr. Limkeman said he would request to be tested. Mr. Limkeman stated that he was not comfortable with returning to the employment until the situation with Ms. Jordan was resolved. The board did not respond to this message from the claimant.

Beginning on June 17, 2020, Ms. Jordan sent a text messages to the claimant requesting an update about his return to work. Mr. Limkeman did not respond to Ms. Jordan until June 22, 2020.

On June 19, 2020, the claimant again contacted the board. Mr. Limkeman wrote that Ms. Jordan was texting him about whether he could return to work. Mr. Limkeman wrote that he was not comfortable speaking with Ms. Jordan "until this situation is settled." Mr. Limkeman stated that he had been tested for COVID-19 on Wednesday, had received his results on June 19, and that he was negative for COVID-19. Mr. Limkeman stated that his brother's girlfriend had tested positive and that he had been around his brother's girlfriend. Mr. Limkeman stated that he did not feel comfortable reporting for work until he knew he was negative for COVID-19 and healthy. Mr. Limkeman added that he was not comfortable reporting for work "until the situation with Kayla is dealt with."

On Sunday, June 21 2020, a board member responded to the claimant. The board member wrote that there had been an emergency situation with a positive COVID-19 case at the center during the preceding week, that the board had not had the opportunity to speak with Ms. Jordan about the claimant's concern, but that the board would speak with her the next day. The board member told the claimant that she thought the best thing was for the claimant to stay at home for a few more days. The board member wrote that the board was looking forward to having him back. On June 21, the claimant replied that he would be getting tested again in a few days to make sure that he did not have COVID-19. There was not further communication between the claimant and the board.

On June 22, 2020, Ms. Jordan sent a text message to the claimant in which she wrote, "If I don't hear from you by tomorrow at 5:00 p.m., I will assume that you have resigned from your position due to no contact." Mr. Limkeman responded that he did plan on working there still. Ms. Jordan responded, "2:00 to close?" Mr. Limkeman stated that he was confused about the 2:00 p.m. to close. Ms. Jordan replied that the claimant had been unreliable and has been late or absent seven times without an excuse. Ms. Jordan added that there were other reasons that she would be happy to discuss in person. Ms. Jordan wrote that from 8:00 a.m. to 2:00 p.m., the daycare did not need extra staff. Ms. Jordan wrote that the daycare needed people from 2:00 p.m. to close and that that was the basis for offering those hours. Ms. Jordan asked when would be a good time for the claimant to meet and provided her work schedule for the next two weeks. Mr. Limkeman stated that he was getting tested the next Wednesday for the coronavirus and would contact Ms. Jordan after that. The conversation ended and Ms. Jordan never heard from the claimant again.

On August 23, 2020, an Iowa Workforce Development Benefits Bureau deputy entered a reference 02 decision that held Mr. Limkeman had voluntarily quit the part-time employment on June 23, 2020 without good cause attributable to the employer, but that Mr. Limkeman remained eligible for benefits, based on other base period employment, provided he was otherwise eligible. Mr. Limkeman appealed the reference 02 decision. On September 22, 2020, Administrative Law Judge Stephanie Callahan entered a decision in Appeal Number 20A-UI-09406-SC-T in which she affirmed the determination that the claimant had voluntarily quit without good cause attributable to the employer, but modified the reference 02 decision. Administrative Law Judge Callahan determined the part-time employment was not supplemental in nature and that the quit without good cause subjected Mr. Limkeman to full disqualification. Mr. Limkeman did not appeal the decision in Appeal Number 20A-UI-09406-SC-T.

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 provides, in relevant part, as follows:

> Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.
>
> (1) An individual who is ill and presently not able to perform work due to illness.
> …
> (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.
> …
> (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

> …
> (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.
> …
> (29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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).

Mr. Limkeman did not meet the able and available requirements at the time he established the original claim that was effective May 3, 2020. Right out of the gate, Mr. Limkeman was on a leave of absence that he requested and that the employer approved for the period of May 4, 2020 through May 17, 2020. During the week that ended May 23, 2020, Mr. Limkeman worked his usual 20 hours per week and received wages that exceeded his weekly benefit amount by more than $15.00. Mr. Limkeman cannot be considered unemployed or partially unemployed during that week. During the holiday week that ended May 30, 2020, Mr. Limkeman worked one shift and requested the remaining shift off. Mr. Limkeman elected to be absent for the majority of the week and did not meet the availability requirement. During the weeks between May 31, 2020 and June 20, 2020, the employer continued to have the same work available for Mr. Limkeman, but Mr. Limkeman continued to be unavailable for the work. One can appreciate

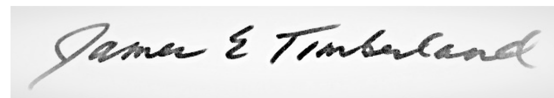
the employer's frustration with Mr. Limkeman after he seemed to engage in a course of conduct that perpetuated his unavailability for work while he continued to make unemployment insurance weekly claims, in which he asserted he was available for work. The evidence in the record fails to establish that Mr. Limkeman was available for work, temporarily unemployed, or partially unemployed within the meaning of the law at any point between May 3, 2020 and the benefit week that ended June 27, 2020. Benefits are denied for the period of May 3, 2020 through June 27, 2020. The employer's account shall not be charged for benefits for the period beginning May 3, 2020 through June 27, 2020. Appeal Number 20A-UI-09406-SC-T already relieves the employer's account for benefits for the period following the separation from the employment.

In light of the remand included in Appeal Number 20A-UI-09406-SC-T, there is no need for a duplicative remand in this appeal number.

DECISION:

The August 3, 2020, reference 01, decision is reversed. The claimant did not meet the able and available requirements and was not temporarily or partially unemployed at any point between May 3, 2020 and June 27, 2020. Benefits are denied for the period beginning May 3, 2020 through June 27, 2020. The employer's account shall not be charged for benefits for the period of May 3, 2020 through June 27, 2020.

In light of the remand included in Appeal Number 20A-UI-09406-SC-T, there is no need for a duplicative remand in this appeal number.



James E. Timberland
Administrative Law Judge

November 20, 2020
Decision Dated and Mailed

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NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.

- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to https://www.iowaworkforcedevelopment.gov/pua-information. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**