

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEAN E MOUDRY
Claimant

INFASTECH DECORAH LLC
Employer

APPEAL NO. 21A-UI-03669-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code section 96.1A(37) – Temporarily Unemployed

STATEMENT OF THE CASE:

The claimant, Dean Moudry, filed a timely appeal from the January 14, 2021, reference 01, decision that denied benefits for the two-week period of October 18-31, 2020, based on the deputy's conclusion that the claimant was unable to work the major portion of the work week due to personal reasons or obligations. After due notice was issued, a hearing was held on March 17, 2021. Claimant participated. Alice Bjergum represented the employer. There were three appeal numbers set for a consolidated hearing: 21A-UI03669-JTT, 21A-UI-03670-JTT and 21A-UI-03671-JTT. Exhibit A was 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 two-week period October 18-31, 2020.

Whether the claimant was temporarily and/or partially unemployed during the two-week period of October 18-31, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all times been employed by Infastech Decorah, L.L.C. as a full-time building maintenance worker. The claimant's duties involve grounds keeping and building maintenance at three building locations. The claimant's usual work hours are 7:00 a.m. to 3:00 p.m. Monday through Friday. While the claimant performed the bulk of his duties away from other staff, he would cross paths with other staff in the course of performing his indoor work duties and would work with another staff member when the duties required two people. The claimant's wage during the relevant period was \$20.62 an hour.

In April 2020, the employer instituted a COVID-19 workplace safety protocol that was based on Centers for Disease Control guidelines. The guidelines included screening employees prior to allowing employees to enter the workplace. The screening process included soliciting employee

responses to a questionnaire. The questions included inquiry about whether the employee had experienced any symptoms consistent with COVID-19 during the preceding 72 hours, whether the employee had traveled by plane, train or bus during the preceding 14 days, whether the employee had been exposed to COVID-19 or suspected exposure to COVID-19 during the preceding 14 days, and whether the employee had attended any large gatherings during the preceding 14 days. The employer communicated the policy to employees, including the claimant, through “safety time-out” meetings. The employer conspicuously posted the COVID-19 safety protocol at each entrance and exit. The claimant was well aware of the COVID-19 safety protocol and well aware that it extended to his conduct outside of work that could have impact on safety in the workplace.

On October 5, 2020, the claimant spoke to the human resources manager regarding his daughter's upcoming wedding. The wedding was scheduled for October 17, 2020 in Waterloo. The claimant shared that there would be a rehearsal, a wedding ceremony, and a reception that would include a dance. The claimant shared that 200 guests were invited and that 140 had responded to confirm their plans to attend. The claimant shared that masks and hand sanitizer would be made available, but indicated he was unsure whether he would wear a mask. The claimant and the human resources manager agreed to confer after the wedding and before the claimant's return to the employment to determine whether it was safe for the claimant to immediately return to the employment or whether the claimant would need to quarantine for two weeks prior to returning to the employment.

The claimant attended the 25-person rehearsal dinner, the wedding ceremony, and the reception, including the dance. While the wedding included arrangements for social distancing, the claimant did not socially distance. While some other attendees wore masks, the claimant elected not to wear a mask for any of the events. This included not wearing a mask while dancing on the crowded dance floor.

The claimant's next scheduled work day following the wedding was Monday, October 19, 2020. On that morning, the claimant contacted the human resources manager and shared that he had not worn a mask and had not socially distanced at any of the events associated with the wedding. The claimant was not experiencing any symptoms of COVID-19. Pursuant to the employer's COVID-19 protocol, the claimant began a 14-day quarantine period with the mutual understanding that the claimant and the human resources manager would speak on Thursday, October 29, 2020 to determine whether it was safe for the claimant to return to work on Monday, November 2, 2020.

When parties spoke on November 2, 2020, the claimant was still symptom-free. The parties agreed that the claimant would return to work on Monday, November 2, 2020. The claimant returned to work on November 2, 2020 and worked his full-time hours that week.

The claimant established an original claim for benefits that was effective October 18, 2020. Iowa Workforce Development set the weekly benefit amount at \$493.00. The claimant made weekly claims for the weeks that ended October 24, October 31, November 14, November 28, and December 5, 2020. The claimant did not make a weekly claim for the week that ended November 7, 2020.

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 Code section 96.1A(37) 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 weight of the evidence in the record establishes that the claimant was physically and mentally able to work available for full-time work, but temporarily laid off during the two week period of October 18-31, 2020. The claimant remained symptom free and ready to report for work. The employer declined to allow the claimant to return to work until November 2, 2020 due to the employer's COVID-19 protocol. The claimant is eligible for benefits for the two-week period of October 18-31, 2020, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The January 14, 2021, reference 01, decision is reversed. The claimant was able to work available for work, but temporarily laid off during the two week period of October 18-31, 2020. The claimant is eligible for benefits for the period of October 18, 2020, provided he meets all other eligibility requirements. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

June 29, 2021
Decision Dated and Mailed

jet/scn