

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUSTIN T KEEFE
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 20A-UI-04345-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 11, 2020, reference 01, decision that allowed benefits effective March 22, 2020, based on the deputy's conclusion that the claimant was able to work and available for work, but on a short-term layoff. After due notice was issued, a hearing was held on June 16, 2020. Claimant Justin Keefe participated. Sarah Fiedler represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and KPYX.

ISSUES:

Whether the claimant was able to work and available for work during the period of March 11, 2020 through May 30, 2020.

Whether the claimant was temporarily laid off during the period of March 11, 2020 through May 30, 2020.

Whether the employer's account may be charged for benefits paid to the claimant for the period of March 22, 2020 through May 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Justin Keefe established an original claim for benefits that was effective March 22, 2020. Team Staffing Solutions, Inc. is a base period employer in connection with the claim. Iowa Workforce Development set Mr. Keefe's weekly benefit amount at \$481.00. IWD paid Mr. Keefe \$4,794.00 in regular benefits for 10 weeks between March 22, 2020 and May 30, 2020. IWD also paid Mr. Keefe \$5,400.00 in Federal Pandemic Unemployment Compensation for nine weeks between March 29, 2020 and May 30, 2020.

Mr. Keefe is currently employed by Team Staffing Solutions, a temporary employment agency. In May 2019, Mr. Keefe began a full-time, temp-to-hire work assignment at Siemens. Mr. Keefe's work hours are 6:40 a.m. to 3:15 p.m., Monday through Friday. Mr. Keefe has also been required to work a Saturday shift as needed. Mr. Keefe's most recent hourly wage is \$17.00. There has been no decrease in the hourly wage or in the number of hours the employer has available for Mr. Keefe.

Mr. Keefe and his wife have two children who are nine and six years old. Both children attend elementary school in Burlington. Mrs. Keefe works an overnight shift and usually sleeps during the day, when the children are usually at school. The children's grandmother usually provides childcare when Mr. Keefe and Mrs. Keefe are unavailable due to their work schedules and Mrs. Keefe's sleep schedule. Due to the COVID-19 pandemic and underlying health issues, the grandmother has not been available to provide childcare since March 2020. During the week of March 22-28, 2020, the children were on Spring Break. Effective April 1, 2020, the children's elementary school closed due to the COVID-19 pandemic. The closure was at first only to be through April 15, 2020, but was later extended through the end of the school year, which ended during the first week in June 2020.

In March 2020, Mr. Keefe requested a leave of absence pursuant to a Siemens COVID-19 policy announcement that extended leave to parents who lacked childcare due to COVID-19. Siemens and Team Staffing approved the leave request. Before Mr. Keefe commenced the approved leave, he last performed work for the employer on Monday, March 23, 2020. Mr. Keefe then continued off work for the purpose of caring for his children until he returned to the employment on June 1, 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, relevant part, as follows:

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.

Iowa Admin. Code r. 871-24.23(8) and (10) provide:

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

...

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

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 Code Section 96.19(38)(c).

In response to the Covid-19 pandemic, Iowa Workforce Development published on its website a list of Covid-19-related scenarios under which a claimant would be eligible for unemployment insurance benefits. The scenarios create limited and temporary exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios included circumstances wherein the claimant is needs to be off work to care for a school aged children in response to a COVID-19 related school closure. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Iowa Workforce Development published on its website Unemployment Insurance Guidance for Employers and Workers. As part of that publication, the Agency announced that claims filed as a direct or indirect result of Covid-19 would not be charged to employers. See <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>, Information for Employers.

The evidence in record establishes that Mr. Keefe was on a leave of absence that he requested and the employer approved. The effective dates of the leave of absence were March 24, 2020

through May 30, 2020. The leave was based on a COVID-19 based loss of childcare services and a COVID-19 based school closure. Based on the COVID-19 related exceptions to the able and available requirements, Mr. Keefe met those requirements during the period of March 22, 2020 through May 30, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements. Mr. Keefe was not temporarily laid off. The employer continued to have the same work available. The employer's account will not be charged for the benefits paid to Mr. Keefe for the period of March 22, 2020 through May 30, 2020.

DECISION:

The May 11, 2020, reference 01, decision is modified in favor of the employer. Pursuant to the COVID-19 exceptions to the able and available requirements, the claimant met those requirements during the period of March 22, 2020 through May 30, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements. The claimant was not temporarily laid off. The employer's account shall not be charged for the benefits paid to the claimant for the period of March 22, 2020 through May 30, 2020



James E. Timberland
Administrative Law Judge

July 10, 2020
Decision Dated and Mailed

jet/sam