

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDI J SALDEEN
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL NO. 20A-UI-04617-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/17/19
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Brandi Saldeen filed a timely appeal from the May 22, 2020, reference 01, decision that denied benefits effective April 5, 2020, based on the deputy's conclusion that Ms. Saldeen was on a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. After due notice was issued, a hearing was held on June 11, 2020. Ms. Saldeen participated and presented additional testimony through Jennifer Graham. Sara Fiedler represented the employer. Exhibits A through E were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant (DBRO and KPYX).

ISSUES:

Whether the claimant was able to work and available for work during the period of April 5, 2020 through May 30, 2020.

Whether the employer's account may be charged for the benefits paid to the claimant for the period of April 5, 2020 through May 30, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brandi Saldeen established an additional claim for benefits that was effective April 5, 2020. Ms. Saldeen made weekly claims for the eight-week period of April 5, 2020 through May 30, 2020.

Ms. Saldeen began her employment with Team Staffing Solutions, Inc. in March 2020. Team Staffing is a temporary employment firm. On March 18, 2020, Ms. Saldeen began a full-time work assignment at Siemens. Ms. Saldeen's work hours in the assignment are 6:45 a.m. to 3:15 p.m., Monday through Friday. The work involves fabricating wind turbine blades. The work requires that Ms. Saldeen be present in the workplace to perform the work duties. Ms. Saldeen has two children. The children are five years old and one year old. Ms. Saldeen uses an in-home day provider to care for her children when she is at work. On April 6, 2020, Ms. Saldeen's daycare provider notified Ms. Saldeen that the provider was temporarily ceasing operations in light of the COVID-19 pandemic. Ms. Saldeen did not have an alternative

childcare arrangement. Ms. Saldeen notified Team Staffing of her loss of childcare. Team Staffing and Siemens approved Ms. Saldeen's extended absence from the workplace, but required that Ms. Saldeen periodically provide updates to Siemens during the absence. Siemens had been allowing workers who were dealing with a COVID-19 related loss of childcare to take time away from the assignment without consequences in the assignment. Team Staffing and Siemens continued to have full-time work available throughout the time Ms. Saldeen was away from the assignment. On May 7, 2020, Ms. Saldeen contacted her daycare provider to learn when the provider might recommence operations. Siemens required workers who were off work due to a COVID-19 loss of childcare to return by June 1, 2020. Ms. Saldeen's provider reopened effective June 1, 2020 and Ms. Saldeen returned to the assignment at that time.

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(8) and (10) provides:

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.

In response to 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 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 suffers a lack of childcare due to COVID-19 school closure. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020. Iowa Workforce Development has in other announcements expended the childcare exemption to the availability requirement to include a COVID-19 loss of daycare. See *Unemployment Insurance Webinar for Employees Impacted by COVID-19*, March 31, 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.

During the period of April 6 2020 through May 31, 2020, Ms. Saldeen was on a leave of absence that she requested and that employer approved. The leave was based on a COVID-19 related loss of daycare. During the leave, the employer continued to have the same work available. Under ordinary circumstances, the leave of absence would prevent Ms. Saldeen from meeting the availability requirement and would disqualify her for unemployment insurance benefits. However, under the COVID-19 related temporary exception to the availability requirement, the administrative law judge concludes that Ms. Saldeen satisfied the availability requirement during the period of April 5, 2020 through May 30, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements. The employer's account will not be charged for benefits paid to Ms. Saldeen for the period of April 5, 2020 through

May 30, 2020. The employer continued to have the work available. In addition, Iowa Workforce Development published on its website an announcement 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.

DECISION:

The May 22, 2020, reference 01, decision is reversed. Based on the Agency's COVID-19 related exceptions to the availability requirements, the claimant met the able and available requirements for the period of April 5, 2020 through May 30, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits for the period of April 5, 2020 through May 30, 2020.



James E. Timberland
Administrative Law Judge

July 9, 2020
Decision Dated and Mailed

jet/scn