

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ISIAH X PASSI
Claimant

APPEAL NO. 20A-UI-08619-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROC TAPROOM INC
Employer

OC: 03/15/20
Claimant: Appellant (1/R)

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 July 21, 2020, reference 02, decision allowed benefits to the claimant effective March 15, 2020, 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 2, 2020. Claimant Isiah Passi did not provide a telephone number for the hearing and did not participate. Juliet Diaz represented the employer. Exhibits 1 and 2 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 for the period beginning March 15 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 15, 2020.

Whether the employer's account may be charged for benefits for the period beginning March 15, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Isiah Passi was employed by ROC Taproom, Inc., doing business as Old Chicago Pizza & Taproom as a part-time dishwasher and back of house employee at the employer's Ames location. Mr. Passi began the employment on March 4, 2020 and last performed work for the employer on March 16, 2020. Mr. Passi's wages was \$11.00 per hour. Mr. Passi was not guaranteed a particular number of work hours. Instead, the employer agreed to work around Mr. Passi's availability.

Effective March 18, 2020, the employer temporarily laid off Mr. Passi in connection with the Governor's State Public Health Emergency Declaration in which the Governor directed restaurants to cease dine-in services to prevent community spread of COVID-19.

The employer's Ames location reopened for business on May 1, 2020. In preparation for the opening, the employer contacted Mr. Passi by telephone during the week of April 19-25, 2020 to recall him to the same employment. Mr. Passi did not return to the employment.

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 96.19(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.

In response to the economic impact of the COVID-19 pandemic, 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. .

During the appeal hearing, the employer presented evidence pertaining to an alleged work refusal and an alleged separation from the employment. Both issues were beyond the scope of the issues set forth on the hearing notice that was mailed to the parties for the hearing set for September 2, 2020. The claimant was not present for the hearing and therefore could not consent to the waiver of notice necessary to enter a ruling regarding matters beyond the scope of the issues set forth in the hearing notice. Iowa Administrative Code rule 871-26.14(4) provides: "The hearing shall be confined to evidence relevant to the issue or issues stated on the notice of hearing." Accordingly, this decision will be limited to the period between March 15, 2020 and the benefit week that ended April 18, 2020. The evidence in the record establishes that during that five-week period the claimant was temporarily laid off and that the layoff was based on COVID-19. The claimant is eligible for benefits for the five-week period of March 15, 2020 through April 18, 2020, provided he is otherwise eligible. In light of the COVID-19 basis for the claim, the employer's account will not be charged for benefits for the five-week period of March 15, 2020 through April 18, 2020.

This matter will be remanded to Benefits Bureau for determination of whether the claimant was able to work and available for work during the period beginning April 19, 2020. The remand should address whether the claimant refused an offer of suitable work without good cause on or about April 24, 2020 and whether the claimant separated from the employment for a reason that would disqualify him for benefits or relieve the employer of liability for benefits for the period beginning on or after April 19, 2020.

DECISION:

The July 21, 2020, reference 02, is affirmed. The claimant was temporarily laid off during the period of March 15, 2020 through April 18, 2020. The claimant is deemed able and available for work during that five-week period. The claimant is eligible for benefits for the period of March 15, 2020 through April 18, 2020, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits for the period of March 15, 2020 through April 18, 2020.

This matter is remanded to Benefits Bureau for determination of whether the claimant was able to work and available for work during the period beginning April 19, 2020. The remand should address whether the claimant refused an offer of suitable work without good cause on or about April 24, 2020 and whether the claimant separated from the employment for a reason that would disqualify him for benefits or relieve the employer of liability for benefits for the period beginning on or after April 19, 2020.

The claimant would be wise to participate in any subsequent unemployment insurance proceedings, in light of the fact that he is at risk of having to repay several thousands of dollars of unemployment insurance benefits for the period beginning April 19, 2020.



James E. Timberland
Administrative Law Judge

September 4, 2020
Decision Dated and Mailed

jet/mh