

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID D SEXTON

Claimant

APPEAL NO. 21A-UI-03685-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INFASTECH DECORAH LLC

Employer

OC: 12/01/19

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, David Sexton, filed a timely appeal from the January 14, 2021, reference 01, decision that denied benefits for the period beginning October 11, 2020, based on the deputy's conclusion that the claimant requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. A due notice to the parties, a hearing was held on March 17, 2021. The claimant participated. Alice Bjergum represented the employer. Exhibit A was received into evidence. The administrative law judge too, official notice of the following Agency administrative records: DBRO, KCCO and KPYX.

ISSUE:

Whether the claimant was able to work and available for work during the three-week period of October 11-31, 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 machine operator. The claimant's usual work hours are 7:00 a.m. to 3:00 p.m., Monday through Friday. The claimant works in proximity to three or four coworkers and in a manufacturing plant with about 300 workers.

In April 2020, the employer instituted a COVID-19 workplace safety protocol that was based on Centers for Disease Control guidelines and that was intended to decrease that risk of COVID-19 in the workplace. The employer conspicuously posted the COVID-19 safety protocol at each entrance and exit. The employer held Safety Time-out meetings that addressed the safety protocol. Under the safety protocol, an employee who attended a large gathering where social distance and personal protective equipment were not universal would have to quarantine for 14 days prior to returning the employment. The claimant was at all relevant times aware of the COVID-19 safety protocol and understood that the policy extended to his conduct outside of work.

On October 10, 2020, the claimant attended a family friend's wedding. The claimant had decided to attend the wedding regardless of the impact on his employment. One hundred fifty to 200 people attended the wedding. The claimant attended and worked as a volunteer bartender at the wedding reception. A portion of the attendees wore face masks intended to hinder the spread of COVID-19. The remainder of the attendees did not wear a protective face covering. The claimant did not consistently wear a face mask. The attendees did not socially distance. The claimant knew in advance of the wedding that his attendance would result in him being unable to return to the employment for two weeks following the wedding.

On Monday, October 12, 2020, the claimant notified the human resources manager that he had attended a local wedding, that there had been outside events and an indoors reception, that there were about 200 guests, that he had not been able to wear a mask the whole, that it was difficult to socially distance because there was not a lot of space and that he had been in proximity to other attendees. The claimant conceded that the gather did not comply with the employer's safety protocol. The parties agreed that the claimant would remain off work to quarantine through Friday, October 23, 2020, that they would plan for the claimant to return to work on Monday, October 26, 2020, but that they would confer again on Friday, October 23 to discuss whether the claimant was experiencing symptoms of COVID-19. The employer's expectation was that the claimant would remain quarantined at home during the two-week quarantine period.

The claimant elected not to quarantine at home during the two-week quarantine period. Instead, the claimant made arrangements to assist his family with fall farming activities. On October 17, 2020, the claimant assisted with combining corn. The claimant operated the combine with a nonfamily member worker in the cab who shortly thereafter tested positive for COVID-19. On Monday, October 19, 2020, the claimant was tested for COVID-19. On or about Wednesday, October 21, 2020, the claimant learned that his test result was negative. On Friday, October 23, the claimant and the human resources supervisor conferred regarding whether the claimant was experiencing symptoms of COVID-19. The claimant reported that he was symptom-free, disclosed the October 17 exposure to COVID-19, and referenced his negative COVID-19 test. The employer advised the claimant that he would need to remain off work for an additional week and return to the employment on November 2, 2020. The claimant remained off work for the additional week and returned to the full-time employment on Monday, November 2, 2020.

The claimant established an additional claim for regular unemployment benefits that was effective October 11, 2020, made weekly claims for the weeks that ended October 17, 24 and 31, 2020, and received regular benefits for each of those weeks. This employer is the sole base period employer.

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(29) provides:

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

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

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 claimant was not available for work within the meaning of the law during the period of October 11-31, 2020 and is not eligible for regular benefits for that three-week period. By attending the wedding on October 10, 2020 under the circumstances in evidence, the claimant *elected* to engage in conduct he knew beforehand would force a two-week quarantine period during which he would have to remain off work. During that two-week quarantine that was compelled by the claimant's actions, the claimant *elected* not to quarantine and *elected* instead to engage in further conduct a reasonable person in the claimant's circumstances would know could extend the absence from the workplace in light of the employer's reasonable COVID-19 safety protocol. Because it was the claimant's *election* to engage in conduct that rendered him unavailable for work, the claimant cannot be deemed to have been temporarily unemployed during the three weeks in question. Under the circumstances, the administrative law judge cannot justify under the law rewarding the claimant for gaming the system by rendering himself unavailable for work and cannot justify under the law assessing the employer's account for regular benefits for the three weeks in question.

DECISION:

The January 14, 2021, reference 01, decision is affirmed. The claimant was not available for work within the meaning of the law during the period of October 11-31, 2020 and is not eligible for regular benefits for that three-week period.



James E. Timberland
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 19, 2021

Decision Dated and Mailed

jet/kmj

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 for the affected period, you will be required to repay the benefits you have received.**