

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TYLER J SANDERS
Claimant

KUM & GO LC
Employer

APPEAL NO. 20A-UI-03972-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Tyler Sanders filed a timely appeal from the May 11, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Mr. Sanders was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on May 29, 2020. Mr. Sanders participated. The employer did not provide a telephone number for the appeal hearing and did not participate. 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 has been able to work and available for work since March 15, 2020.
Whether the claimant has been partially unemployed from Kum & Go since March 15, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tyler Sanders established an original claim for benefits that was effective March 15, 2020. Mr. Sanders is currently employed by Mobile Ops, L.L.C., a real estate investment/contracting business owned and operated by Mr. Sanders' father. Mr. Sanders' wage at Mobile Ops is \$15.00 per hour for 40 hours of work per week. That translates to \$600.00 in weekly wages.

Mr. Sanders established his original claim for benefits in response to his father laying him off on or about March 20, 2020 due to a COVID-19 based sharp decline in business activity. Mr. Sanders provided March 20, rather than March 13 or 14, as the last day worked when he established his original claim for unemployment insurance benefits.

Prior to joining Mobile Ops, L.L.C., Mr. Sanders was employed by Kum & Go, L.C. as a part-time store/kitchen associate at a Kum & Go store in Ankeny. Mr. Sanders last performed work for Kum & Go in December 2019. Rather than outright quit the Kum & Go employment, Mr. Sanders and Kum & Go left the door open for Mr. Sanders to return to perform additional work for Kum & Go on an on-call, as-needed basis. In other words, the Kum & Go employment

transitioned from Mr. Sanders' primary employment to a part-time, supplemental employment. Kum & Go has not contacted Mr. Sanders to offer additional work.

Since Mr. Sanders established the original claim that was effective March 15, 2020, he has made consecutive weekly claims. For the week that ended March 21, 2020, Mr. Sanders reported \$600.00 in wages, the last wages he earned from his employment with Mobile Ops prior to the layoff. Mr. Sanders had reported no other wages. Mr. Sanders has continued to be able to work and available for work, but is waiting for his father to recall him to the employment at Mobile Ops. Iowa Workforce Development set Mr. Sanders' weekly benefit amount at \$239.00 and paid that amount in weekly benefits for each of the six weeks between March 22, 2020 and May 2, 2020. The regular benefits paid to Mr. Sanders total \$1,434.00. Iowa Workforce Development also paid \$3,000.00 in Federal Pandemic Unemployment Compensation to Mr. Sanders for five weeks between March 29, 2020 and May 2, 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.

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

Iowa Code Section 96.3(3) provides:

Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

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).

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.

The weight of evidence establishes that Mr. Sanders was still employed full-time with Mobile Ops during the week that ended March 21, 2020, which explains the \$600.00 in wages Mr. Sanders reported when he made his weekly claim for that week. Because Mr. Sanders was working full-time that week, he cannot be deemed unemployed for that week and would not meet the unemployment insurance "availability" requirement for that week. See Iowa Administrative Code rule 871-24.23(23).

The weight of the evidence establishes that Mr. Sanders has been able to work and available for work since March 21, 2020. While Mr. Sanders cannot be deemed temporarily laid off from Kum & Go or partially unemployed from Kum & Go, his status with that part-time supplemental,

on-call employment does not prevent him from meeting the able and available requirements in the context of being temporarily laid off from his full-time employment with Mobile Ops. Effective March 21, 2020, Mr. Sanders is eligible for benefits, provided he meets all other eligibility requirements. The employer account of Kum & Go, L.C. will not be charged.

DECISION:

The May 11, 2020, reference 01, decision is modified in favor of the claimant as follows: The claimant was employed full-time during the week that ended March 21, 2020, did not meet the unemployment "availability" for that week, and is not eligible for benefits for the week that ended March 21, 2020. Since March 15, 2020, the claimant has not been temporarily laid off from or partially unemployed from that part-time supplemental employment at Kum & Go. The employer account of Kum & Go will not be charged for benefits. However, since March 22, 2020, the claimant has been able to work and available for work in the context of being laid off from his full-time employment with Mobile Ops. Effective March 22, 2020, the claimant is eligible for benefits, provided he meets all other eligibility requirements.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn