

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TESSA M KAUFFMAN
Claimant

APPEAL NO. 20A-UI-13064-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/19/20
Claimant: Appellant (2R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment
Iowa Code Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Tessa Kauffman filed a timely appeal from the October 19, 2020, reference 01, decision that denied benefits effective July 19, 2020, based on the deputy's conclusion that Ms. Kauffman was not partially unemployed with the meaning of the law. After due notice was issued, a hearing was held on December 16, 2020. Ms. Kauffman participated. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Tim McCracken. Exhibits 1, and A through C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A. Both parties waived the defect in the hearing notice so that the proper issues could be addressed. The administrative law judge left the hearing record open for the limited purpose of allowing the claimant to submit a copy of her positive COVID-19 test result, which was received into the hearing record as Exhibit D.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning July 19, 2020 through August 1, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period of July 19, 2020 through August 1, 2020.

Whether the employer's account may be charged for benefits for the period of July 19, 2020 through August 1, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by Hy-Vee as a part-time student pharmacist. The claimant averages 20 hours per week during the academic year and works an increased number of hours during the summer break. The claimant's wage during the relevant period was \$14.00 per hour.

On July 19, 2020, the claimant's fiancé began to experience symptoms consistent with COVID-19. The claimant, the fiancé, and the claimant's mother reside in the same household. The claimant's mother is also a Hy-Vee employee at the same store.

On Monday, July 20, 2020, the claimant's mother spoke to the employer regarding the claimant's fiancé's symptoms. Later the same day, the claimant spoke with the. The employer advised the claimant that pursuant to Hy-Vee policy, she could continue to work until her household member had a positive COVID-19 test. In the event of a positive COVID-19 result, the employer's policy required that the claimant go off work, obtain a COVID-19 test, and then was required to remain off work for two weeks if the COVID-19 test was positive.

On Tuesday, the claimant's fiancé received his COVID-19 test results, which were positive for COVID-19. The claimant was at work at the time she learned of the test result and promptly notified the employer of the positive test result. The employer directed the claimant to leave the workplace immediately without returning to her work station and advised that the employer would clock the claimant out. The claimant had been scheduled to work 40 hours that week, but only worked 14.3 hours before the employer sent her home. The claimant earned \$200.00 for the work she performed that week.

The claimant submitted to COVID-19 testing on Wednesday, July 22, 2020. The claimant received her test result on Saturday, July 25, 2020. The claimant tested positive for COVID-19. A Scott County Public Health representative notified the claimant that she needed to quarantine for 14 day from the first symptoms of COVID-19, which the claimant interpreted to mean 14 days from when her fiancé began to experience symptoms on Sunday, July 19, 2020.

The claimant continued to feel well enough to work. The claimant's illness was confined to nasal congestion and a runny nose, with no fever or loss of taste or smell.

The claimant had been scheduled to work 40 hours during the following week, but remained off work pursuant to the employer's policy.

Claimant returned to work on Monday, August 3, 2020.

The claimant established a claim for unemployment insurance benefits that Iowa Workforce Development deemed effective July 19, 2020. IWD set the claimant's weekly benefit amount at \$258.00. The claimant made a weekly claim for the week that ended July 25, 2020 and reported the wages she earned that week prior to being sent home. The claimant made a weekly claim for the week that ended August 1, 2020, for which she had earned no wages. The claimant discontinued her claim after the week that ended August 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:

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(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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.

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 evidence in the record establishes that the claimant was temporarily laid off effective Tuesday, July 21, 2020, due to the COVID-19 concern. The claimant remained physically and mentally able to work and available for work during the temporary layoff. The employer reasonably did not want the claimant in the workplace while there a possibility of her spreading the COVID-19 illness. The claimant was partially unemployed during the week that ended July 25, 2020 and is eligible for benefits for that week, provided she meets all other eligibility requirements. The claimant was temporarily unemployed during the week that ended August 1, 2020 and was eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the period of July 19, 2020 through August 1, 2020, pending remand to the IWD Tax Bureau for a determination of whether the charge may be waived in light of the COVID-19 basis for the temporary layoff.

DECISION:

The October 19, 2020, reference 01, decision is reversed. The claimant was able to work, available work for, but partially unemployed during the week that ended July 25, 2020. The claimant was able to work, available for work, but temporarily unemployed during the week that ended August 1, 2020. The claimant is eligible for benefits for the two-week period of July 19, 2020 through August 1, 2020, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for the period of July 19, 2020 through August 1, 2020, pending remand to the IWD Tax Bureau for a determination of whether the charge may be waived in light of the COVID-19 basis for the temporary layoff.

This matter is **remanded** to the IWD Tax Bureau for a determination of whether the charge may be waived in light of the COVID-19 basis for the temporary layoff.



James E. Timberland
Administrative Law Judge

February 2, 2021
Decision Dated and Mailed

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