

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LOGAN K KELLER-SCHUELER
Claimant

MIKE FINNIN FORD LLC
Employer

APPEAL NO. 20A-UI-08444-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Logan Keller-Schueler filed a timely appeal from the July 2, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Keller-Schueler requested a leave of absence, was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on August 28, 2020. Mr. Keller-Schueler participated and presented additional testimony through Jessica Cigrand. Brad Patterson represented the employer.

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 during the period of April 12, 2020 through July 4, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence⁰ in the record, the administrative law judge finds: Logan Keller-Schueler is employed by Mike Finnin Ford, L.L.C., as a part-time file clerk. Mr. Keller-Schueler usually works 10 to 15 hours per week. His wage is \$9.00 an hour. The nature of the work requires that Mr. Keller-Schueler be present in the workplace in order to perform the work. Mr. Keller-Schueler is 19-year-old man who has significant health conditions that caused him and his mother, Jessica Cigrand, to be particularly concerned about the risk posed by COVID-19. Mr. Keller-Schueler is diagnosed with spina bifida and hydrocephalus. Mr. Keller-Schueler underwent spinal fusion and placement of a rod in his spine five years ago. Mr. Schueler's treatment for hydrocephalus included placement of a shunt. The decision to go off work was not based on advice from a medical professional. Neither Mr. Keller-Schueler nor his mother consulted with a health care provider in connection with Mr. Keller-Schueler's decision to commence a leave of absence from his employment at Mike Finnin Ford. Mr. Keller-Schueler has not contracted COVID-19 and has not been exposed to COVID-19.

The employer implemented social distancing and hygiene guidelines pursuant to guidance from the Centers for Disease Control to reduce the risk of community spread of COVID-19. These included providing hand sanitizer, wearing masks, placing screens to shield employees and customers from airborne spread of the virus, and social distancing that included limiting the number and concentration of people in particular areas in the workplace.

At some point in March or early April 2020, Mr. Keller-Schueler spoke to the employer about his desire to commence a leave of absence and the employer acquiesced in a leave of absence. The employer did not close or reduce Mr. Keller-Schueler's work hours in connection with the COVID-19 pandemic. The employer continued to have the same work available for Mr. Keller-Schueler during the leave of absence. Mr. Keller-Schueler returned to the employment at some point in July or August 2020.

Mr. Keller-Schueler established an original claim for benefits that was effective April 12, 2020. Mr. Keller-Schueler made weekly claims for the period of April 12, 2020 through July 4, 2020 and received benefits. Mr. Keller-Schueler's base period employers include Mike Finnin Ford, Hy-Vee, Inc. and Olson Partners. Ms. Cigrand advises that Hy-Vee temporarily laid off Mr. Keller-Schueler in March out of concern for his health.

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(10) provides:

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

(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.

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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

In connection with 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 is immune-compromised and is advised by a medical professional to self-quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

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).

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.

The weight of the evidence in the record establishes that Mr. Keller-Scheuler was not available for work, and was not totally, temporarily, or partially unemployed within the meaning of the law during the period of April 12, 2020 through July 4, 2020. Mr. Keller-Schueler was indeed on a leave of absence that he requested and that the employer approved for the period the unemployment insurance claim was active. Mr. Keller-Schueler presented insufficient evidence to establish that he is immune-compromised or that his health issues place in at increased risk of contracting COVID-19 or of suffering complications if he does contract the virus. A medical provider did not advise Mr. Keller-Schueler to go off work. Mr. Keller-Schueler neither contracted COVID-19 nor was exposed to COVID-19. The evidence establishes that Mr. Keller-Schueler was at all relevant times physically and mentally able to perform his work duties. The employer did not close its business or reduce the work hours available to Mr. Keller-Schueler. Mr. Keller-Schueler is not eligible for unemployment insurance benefits for the period of April 12, 2020 through July 4, 2020. The employer's account will not be charged for benefits paid to Mr. Keller-Scheuler for the period of April 12, 2020 through July 4, 2020.

This determination that Mr. Keller-Schueler did not meet certain unemployment insurance benefit eligibility requirements is in no way intended to discount or minimize Mr. Keller-Schueler's health issues.

DECISION:

The July 2, 2020, reference 01, is affirmed. The claimant was not available for work, and was not totally, temporarily, or partially unemployed within the meaning of the law during the period of April 12, 2020 through July 4, 2020. Benefits are denied for that period. The employer's account will not be charged for benefits paid for that period.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions in connection with the regular benefits and the Federal Pandemic Unemployment Compensation Benefits paid to the claimant for the period of April 12, 2020 through July 4, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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 this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not

qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



James E. Timberland
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

jet/scn