

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVEN D WIRTJES
Claimant

CUSTOM-PAK INC – LP2
Employer

APPEAL NO. 20A-UI-11790-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Steven Wirtjes filed a timely appeal from the September 17, 2020, reference 01, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Mr. Wirtjes requested and was granted a leave of absence, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on November 17, 2020. Mr. Wirtjes participated. Ron Zimmer represented the employer. Exhibits 1, A, B, and C were received into evidence.

The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUE:

Whether the claimant was able to work and available for work for the period beginning March 22, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant Steven Wirtjes was employed by Custom-Pak, Inc. as a Process Technician. The employer is a blow molding manufacturer. The claimant's duties involved setting up machines to run projects, producing an initial sample product, and troubleshooting issues with machines primarily in an eight or nine machine area. The claimant began with the employer in 1997 and last performed work for the employer on March 18, 2020. In May 2019, the claimant voluntarily transitioned from full-time to part-time status. Thereafter, the claimant worked three or four days a week.

On March 18, 2020, Mr. Wirtjes had a heated verbal exchange with a coworker who was working at a nearby machine and who was clearly ill. Mr. Wirtjes observed as the coworker repeatedly removed his mask and put it back on. In light of the COVID-19 pandemic, the employer had recently posted notice that employees who were ill should stay home. The employer had also suspended discipline for attendance and allowed employees who were uncomfortable reporting for work in the context of the COVID-19 pandemic to stay home. Mr. Wirtjes was concerned that the coworker might have COVID-19, did not believe the

coworker should be in the workplace and told the coworker as much. The coworker responded with a vulgar remark. Mr. Wirtjes demanded that the coworker accompany him to Ron Zimmer's office. Mr. Zimmer is Vice President and General Manager of the employer's DeWitt plant.

Ms. Wirtjes and the coworker were each still very agitated when they arrived at Mr. Zimmer's office. Prior to separating the two employees for one-on-one discussions, Mr. Zimmer advised Mr. Wirtjes that he should have notified management, rather than confronting the coworker and trying to have the coworker removed. Mr. Zimmer told Mr. Wirtjes that he did not want altercations in the plant and that if Mr. Wirtjes did not feel comfortable, he could go home. Mr. Zimmer then met one-on-one with Mr. Wirtjes for an extended period. Mr. Zimmer told Mr. Wirtjes that the employer was still navigating the evolving public safety information regarding COVID-19 and was stressing voluntary measures at that point. Mr. Zimmer told Mr. Wirtjes that he did not believe Mr. Wirtjes' fear of contracting COVID-19 was sufficient to make him eligible for unemployment insurance benefits. Mr. Wirtjes elected to go home. Mr. Wirtjes thereafter elected to remain off work, based on his fear of contracting COVID-19. The employer continued to have work for Mr. Wirtjes, but allowed him to continue off work for an extended period.

By April 29, 2020, the employer had implemented several safety measures to reduce the risk of spreading COVID-19 in the workplace. At that point, the employer notified Mr. Wirtjes and other employees who had elected to remain off work that the employer expected the employees to return on May 4, 2020. When Mr. Zimmer spoke to Mr. Wirtjes, Mr. Wirtjes advised that he would not be returning to work. Mr. Zimmer explained that Mr. Wirtjes' failure to return would be deemed a voluntary quit. Mr. Wirtjes said "okay." Mr. Wirtjes did not consult with a health professional when making his decision to go off work or in making the decision not to return on May 4, 2020. The employer continued to have work for Mr. Wirtjes at that point and up to the present, but Mr. Wirtjes elected to self-quarantine home from that time up to the present. Mr. Wirtjes elected not to look for other employment.

Mr. Wirtjes established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$448.00. Mr. Wirtjes filed weekly claims for each of the weeks between March 22, 2020 and October 24, 2020. Mr. Wirtjes received benefits for the weeks between March 22, 2020 and June 13, 2020. During the first six weeks of the claim, Mr. Wirtjes reported that he was not working, was able to work and available for work, and had not refused any work offers. During the remainder of the claim period, Mr. Wirtjes reported that he was not working, was not able and/or not available to work, and had not refused any offers of employment. Throughout the claim period, Mr. Wirtjes reported zero job contacts, zero wages, zero vacation pay, and zero holiday pay. Mr. Wirtjes discontinued his claim for benefits following the benefit week that ended October 24, 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(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.

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).

Despite Mr. Wirtjes' assertions to the contrary, the weight of the evidence establishes that Mr. Wirtjes was indeed on an informal voluntary leave of absence from March 18, 2020 until April 29, 2020. While Mr. Wirtjes' level of agitation prompted the employer to initially state on March 18, 2020 that he should go home if he was uncomfortable, the employer substantially backed off from that sentiment during the one-on-one meeting that followed and left it to Mr. Wirtjes to decide whether he was comfortable in the workplace or preferred to go off work. Mr. Wirtjes elected to go off work and remain off work. The employer acquiesced in that decision until April 29, 2020, at which time the employer notified Mr. Wirtjes that he was expected to return to work on May 4, 2020 and Mr. Wirtjes elected not to return. The weight of the evidence establishes that the relationship with the coworker involved in the March 18 dispute was not a substantial factor in Mr. Wirtjes' decision to remain off work. Mr. Wirtjes did

not meet the availability requirement during the period when he was still employed and off work of his own volition. Mr. Wirtjes continued to be voluntarily unemployed to not meet the availability requirement through the week that ended October 24, 2020, the last week for which he made a claim for benefits. If Mr. Wirtjes had continued making weekly claims, he would have continued not to meet the availability requirement up to the present, based on his decision to quarantine at home, his decision not to respond to the employer's overtures to return to the employment, and his decision not to seek other employment. Mr. Wirtjes is not eligible for benefits for the period of March 22, 2020 through October 24, 2020.

DECISION:

The September 17, 2020, reference 01, decision is affirmed. The claimant was not available for work during the period beginning March 22, 2020 through the benefit week that ended October 24, 2020 and is not eligible for benefits for that period.

This matter is **remanded** to the Benefits Bureau for a fact-finding interview and entry of decision related to the employment separation.

This matter is **remanded** to the Benefits Bureau for entry of overpayment decisions based on the regular benefits and FPUC benefits the claimant received through June 13, 2020.



James E. Timberland
Administrative Law Judge

November 24, 2020
Decision Dated and Mailed

jet/scn

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, you may be required to repay the benefits you have received**