

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COURTNEY L ZAEHRINGER
Claimant

APPEAL NO. 20A-UI-07495-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEESE'S THIRSTY CAMEL LLC
Employer

OC: 03/29/20
Claimant: Appellant (4/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Temporary Layoff

STATEMENT OF THE CASE:

Courtney Zaehringler filed a timely appeal from the July 1, 2020, reference 01, decision that denied benefits effective March 29, 2020, based on the deputy's conclusion that Ms. Zaehringler requested and 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 11, 2020. Ms. Zaehringler participated. The employer did not provide a telephone number for the 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:

Was the claimant able to work and available for work during the period of March 29, 2020 through May 2, 2020.

Was the claimant temporarily laid off during the period of March 29, 2020 through May 2, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a part-time waitress in the employer's restaurant. The claimant usually works 15 to 20 hours per week. The claimant's hourly wage is \$5.25. The claimant also receives tips that average \$50.00 per shift. The claimant usually works three to four shifts per week. These were the working conditions before COVID-19 became a factor in mid-March 2020 and have been the working conditions the claimant has enjoyed since her return to the employment on April 20, 2020. In mid-March 2020, the employer closed its restaurant to dine-in service in response to the closure directive included in the Governor's Public Health Disaster Proclamation. In connection with the cessation of dine-in services, the employer shifted to curbside service and did not schedule the claimant to work. During the time when the claimant was already temporarily laid off, the claimant requested to commence a leave of absence based on her brother's health issues and the unknown impact COVID-19 might have on her brother's health condition. The claimant was concerned about being exposed to the virus at work and passing it along to her brother at home.

The claimant established a claim for benefits that was effective March 29, 2020 and made weekly claims for the five weeks between March 29, 2020 and May 2, 2020. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$91.00. During the weeks that ended April 4, 11 and 18, 2020, the claimant earned no wages. Iowa Workforce Development paid \$91.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation benefits for each of those three weeks. During the weeks that ended April 25 and May 2, 2020, the claimant was back at work and earned wages that exceeded her weekly benefit amount by more than \$15.00. IWD did not pay benefits to the claimant for the weeks that ended April 25, 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.

Iowa Admin. Code r. 871-24.23(10) and (41) 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.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

In this instance, the claimant was already temporarily laid off from the employment at the time she approached the employer about commencing a leave of absence due to her brother's health concerns. There is no indication in this record that the employer would have had work for the claimant during the period of March 29, 2020 through April 18, 2020. Accordingly, no availability disqualification will enter for the period of March 29, 2020 through April 18, 2020. The claimant is eligible for benefits for that three-week period, provided she meets all other eligibility requirements. During the weeks that ended April 25 and May 2, 2020, the claimant was back at work, earned wages that exceeded weekly benefit amount by more than \$15.00 and, therefore, was not partially or temporarily unemployed within the meaning of the law. The claimant is not eligible for benefits for the weeks that ended April 25, 2020 and May 2, 2020.

This matter will be remanded to the Iowa Workforce Development Tax Bureau for determination of whether the employer's account may be relieved of charges for the period of March 29, 2020 through April 18, 2020 in light of the COVID-19 basis for the temporary layoff.

DECISION:

The July 1, 2020, reference 01, decision is modified in favor of the claimant as follows. The claimant was temporarily laid off during the period of March 29, 2020 through April 18, 2020. The claimant is eligible for benefits for the period of March 29, 2020 through April 18, 2020, provided she is otherwise eligible. The claimant was neither temporarily unemployed nor partially unemployed during the weeks that ended April 25 and May 2, 2020 and is not eligible for benefits for those weeks.

This matter is remanded to the Iowa Workforce Development Tax Bureau for determination of whether the employer's account may be relieved of charge for the period of March 29, 2020 through April 18, 2020 in light of the COVID-19 basis for the temporary layoff.



James E. Timberland
Administrative Law Judge

September 30, 2020
Decision Dated and Mailed

jet/sam