

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KURT D KAESER
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL 22A-UI-04192-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (4R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Per Mar Security & Research Corp, the employer/appellant, filed an appeal from the February 25, 2022 (reference 03) unemployment insurance (UI) decision that allowed benefits as of January 30, 2022 because Mr. Kaeser was on a short-term layoff. The parties were properly notified about the hearing. A telephone hearing was held on March 17, 2022. The employer participated through Chelsea Hutchcroft, assistant operations manager, and Isabella Kogut, Valeu hearing representative. Mr. Kaeser participated personally. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Kaeser able to and available for work?
Is Mr. Kaeser on a leave of absence?
Is Mr. Kaeser temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Kaeser began working for the employer on May 5, 2020. He works as a full-time security officer. His hours are set at 40 hours per week, and the employer pays him \$15.00 per hour as of November 7, 2021. Prior to November 7, the employer paid Mr. Kaeser \$13.00 per hour.

In January 2022, the contract under which Mr. Kaeser was working ended. Mr. Kaeser's last day working was January 21, 2022. Whenever a contract ends the employer contacts the employee about the next work assignment. Mr. Kaeser was ready to continue working but the employer did not have work available for him. Mr. Kaeser had already filed an initial claim for benefits effective March 14, 2021. Mr. Kaeser filed an additional claim as of January 30, 2022.

On February 17, the employer offered Mr. Kaeser a full-time security officer position at a job site checking in trucks at a pay rate of \$13.00 per hour. Mr. Kaeser had done this type of work before and found it stressful. Mr. Kaeser declined the job offer because it was too stressful and not a good fit for him. The employer has not offered Mr. Kaeser any other job assignments as of the hearing date. On February 28, Mr. Kaeser asked the employer about his job status and the employer told him that he is still employed with the employer.

Iowa Workforce Development has not investigated the issue of Mr. Kaeser refusing the employer's offer of work on February 17, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Code § 96.1A(37) 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(10) and (26) provide:

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.

(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.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (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.

In this case, Mr. Kaeser is totally unemployed from January 30, 2022, the date of his additional claim, through February 16, 2022. Mr. Kaeser was ready to work but did not work and the employer did not pay him during this time period. Benefits are allowed from January 30, 2022 through February 16, 2022. Since the employer did not have work for Mr. Kaeser and was not paying him during this time, the employer's account should be charged.

DECISION:

The February 25, 2022 (reference 03) decision is MODIFIED IN FAVOR OF THE APPELLANT, the employer. Mr. Kaeser is totally unemployed from January 30, 2022 through February 16, 2022. Benefits are allowed from January 30, 2022 through February 16, 2022. The employer's account shall be charged for these benefits.

REMAND:

The issue of Mr. Kaeser refusing the employer's offer of work on February 17, 2022 is REMANDED (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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April 4, 2022
Decision Dated and Mailed

dz/mh