

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KENT A BLIVEN**  
Claimant

**APPEAL NO. 21A-UI-14766-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUCCESSFUL LIVING SUPPORTIVE**  
Employer

**OC: 03/28/21  
Claimant: Appellant (1R)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant, Kent Bliven, filed a timely appeal from the June 17, 2021, reference 01, decision that denied benefits effective March 28, 2021, based on the deputy's conclusion that the claimant was unduly restricting his availability for work. After due notice was issued, a hearing was held on August 23, 2021. Claimant participated. Roger Goedken represented the employer and presented additional testimony through Deb Watson. 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:**

Whether the claimant was able to work and available for work for the period beginning March 28, 2021.

Whether the claimant was partially and/or temporarily unemployed for the period beginning March 28, 2021.

Whether the employer's account may be charged for benefits for benefits for the period beginning March 28, 2021.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established an original claim for benefits that was effective March 28, 2021. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$263.00. When the claimant applied for benefits, he characterized his claim as being based on COVID-19. For that reason, the weekly reporting system did not prompt the claimant to input weekly claim information. The claimant has made weekly claims each of the weeks between March 28, 2021 and August 7, 2021. The claimant filed late weekly claims for the weeks that ended June 19, July 3, July 17, July 24, and July 31, 2021.

The claimant was most recently employed by Successful Living Supportive. The claimant began that employment in 2017 and last performed work for the employer on December 8, 2020. Successful Living Supported provides multiples services to persons with chronic mental illness. The services provided include residential services at multiple locations in Iowa City.

The claimant worked as a part-time Habilitation Home Counselor. The claimant generally worked evening hours. The claimant would be primarily assigned to work at a particular residence, but would fill in at other residences as needed. The claimant's immediate supervisor would be the house lead person at the house where he was working. From October 20, 2020 until December 8, 2020, the claimant was assigned to the Juniper residence and did not perform work at other residences. Between July 17, 2020 and October 20, 2020, the claimant did not perform work for the employer. On or about December 8, 2020, the lead person at the Juniper residence told the claimant he was no longer needed at the Juniper residence. The lead person did not tell the claimant that he was laid off. The employer had other residences with open shifts. The claimant elected to interpret the lead person's text message utterance as an indication he was laid off.

The employer has at all relevant times had work available for the claimant. Since the claimant sent off work in December 2020, the employer has periodically inquired whether the claimant is interested in work hours. The claimant has consistently provided a non-committal response by indicating that he would think about it. At one point, the claimant expressed interest in working day-shift hours, but declined to commit to the full-time status that comes with such hours.

The claimant operates two or three self-employment ventures that impact on his availability for employment. The claimant has for several years operated a computer service business. The amount of time the claimant spends on the business venture varies from week to week and from month to month. The claimant might spend five to 10 hours a week, and 12 to 35 hours per month on the business venture. Successful Living Supported utilizes the claimant's I.T. business. Throughout 2020 and until recently, Roger Goedken, Executive Director, met with the claimant weekly to discuss I.T. issues. Since the claimant went off in December 2020, the claimant has not expressed interest in performing additional Habilitation Home Counselor work. During that time, the employer has had difficulty maintaining a full staff and has included the claimant's broadcast mailings regarding enhanced financial incentives to perform for the employer.

The claimant also runs a limousine service. The claimant advises that the bulk of his bookings fall on the Fridays or the weekends.

Since the claimant established his claim for benefits, he has not sought other employment. Though the claimant asserts he has instead been waiting to return to work with this employer, his interactions with the employer indicate otherwise.

#### **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(7) and (20) provides:

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

(7) Where an individual devotes time and effort to becoming self-employed.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Code section 96.1A(37)(c) provides:

"Total and partial unemployment".

...

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 claimant has not been available or work within the meaning of the law since March 28, 2021. The claimant has not worked for this employer since December 8, 2020. The claimant has not been temporarily laid off at any point since he filed the claim that was effective March 28, 2021. Indeed, the period of unemployment lasted almost four months before the

claimant filed his unemployment insurance claim. Despite regular contact with the employer through his self-employment venture, and despite his statement that he has been waiting to return to work with this employer, the claimant has deflected several invitations from this employer to engage in discussion about returning to perform additional work as a Habilitation House Counselor. The weight of the evidence establishes that the claimant has elected to focus on his various self-employment ventures and has thereby unduly restricted his availability for work. Benefits are denied effective March 28, 2021. The availability disqualification continues at the time of the appeal hearing. Because benefits are denied, there is no need to further address employer liability for benefits in connection with this appeal.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

The claimant filed late weekly claims for the weeks that ended June 19, July 3, July 17, July 24, and July 31, 2021. This provides an additional basis for concluding the claimant did not meet the availability requirement and is not eligible for benefits for these weeks.

This matter will be remanded to the Benefits Bureau for an initial decision concerning the claimant's separation from the employment.

**DECISION:**

The June 17, 2021, reference 01, is affirmed. The claimant has not been available for work since establishing the March 28, 2021 claim for benefits. Benefits are denied effective March 28, 2021. The availability disqualification continues.

This matter is remanded to the Benefits Bureau for an initial decision concerning the claimant's separation from the employment.



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James E. Timberland  
Administrative Law Judge

August 27, 2021  
Decision Dated and Mailed

jet/mh