

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DUANE W COOP
Claimant

CONTITECH USA INC
Employer

APPEAL NO. 20A-UI-04615-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (2/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Duane Coop filed a timely appeal from the May 20, 2020, reference 01, decision denied benefits effective March 29, 2020, based on the deputy's conclusion that Mr. Coop was on a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on June 11, 2020. Mr. Coop participated personally and was represented by attorney James Becker, Jr. The employer did not provide a telephone number for the hearing and did not participate. Exhibits 1 through 8 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Duane Coop is employed by Contitech USA, Inc. as a full-time production worker. The nature of the work requires that Mr. Coop be physically present in the workplace to perform the work duties. Mr. Coop last performed work for the employer on or about March 26, 2020. On March 17, 2020, the employer distributed information to employees concerning COVID-19. Included in these materials was a requirement that employees "self-isolate at home for 14 days before returning to work" if the employee traveled to an area the Centers for Disease Control and Prevention had identified as a high-risk area. Also included in the distributed materials was a directive that employees "experiencing issues or concerns related to COVID-19" contact human resources to learn of available resources. On March 27, 2020, Mr. Coop traveled to Kahoka, Missouri for a chiropractic appointment. Mr. Coop notified the employer that same day that he had traveled to the out-of-state appointment and advised the employer that he needed to self-quarantine pursuant to the directive contained in the materials the employer distributed. Mr. Coop then commenced a period of self-isolation with the employer's approval. Mr. Coop has provided an April 1, 2020 note from his doctor wherein the doctor identified Mr. Coop as being at high risk in the event that he contracts COVID-19 based on Mr. Coop having type II

diabetes. While the document does not specifically state that Mr. Coop needed to self-quarantine, Mr. Coop advises that his doctor did indeed advise him to self-quarantine. Ms. Coop advises that he has multiple other health factors that make him at high risk vis-à-vis COVID-19. Mr. Coop continued off work with the employer's approval. As of the June 11, 2020 appeal hearing, Mr. Coop continued off work due to his doctor's recommendation and with the employer's approval. The employer has continued to have full-time work available for Mr. Coop.

Mr. Coop points also to Governor Reynolds' May 15, 2020 Proclamation of Disaster Emergency, which included the following:

PROTECTION OF VULNERABLE IOWANS

SECTION ONE. I continue to strongly encourage all vulnerable lowans, including those with preexisting medical conditions and those older than 65, in all counties of the state to continue to limit their activities outside the home, including their visits to businesses and other establishments and their participation in gatherings of any size and any purpose. And I encourage all lowans to limit their in-person interactions with vulnerable lowans and to exercise particular care and caution when engaging in any necessary interactions.

Mr. Coop established an original claim for benefits that was effective March 29, 2020 and has made weekly benefits since that time. Iowa Workforce Development set Mr. Coop's weekly benefit amount at \$500.00. At the time of the appeal hearing Mr. Coop had made weekly claims through the benefit week that ended June 6, 2020 and had received regular benefits and Federal Pandemic Unemployment Compensation for the period of March 29, 2020 through May 9, 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), (29) and (35) 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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In response to the COVID-19 pandemic, 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 at increased risk due to a pre-existing health condition and has been advised by a medical provider to self-quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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 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. Based on this Agency pronouncement, the employer's account will not be charged for benefits paid the claimant in connection with the COVID-19 based claim that was effective March 29, 2020.

The evidence establishes that Mr. Coop has been on a COVID-19 based approved leave of absence since he established the claim for benefits that was effective March 29, 2020. The leave is based on Mr. Coop being at increased risk in connection with the COVID-19 pandemic due to diabetes, as indicated by his physician. Under the COVID-19 based exceptions to the able and available requirements, the administrative law judge concludes that Mr. Coop met those requirements for the period of March 29, 2020 through June 6, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements. This matter will be remanded to the Benefits Bureau for determination of the whether the claimant has met the able and available requirements since June 7, 2020. Because the employer has continued to have the same work for Mr. Coop, and because the leave is based on COVID-19, the employer's account shall not be charged for benefits paid to the claimant for the period of March 29, 2020 through June 6, 2020.

DECISION:

The May 20, 2020, reference 01, decision is reversed. Based on the Agency announcement of COVID-19 based temporary exceptions to the able and available requirements, the claimant met those requirements for the period of March 29, 2020 through June 6, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant for the period of March 29, 2020 through June 6, 2020.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has met the able and available requirements since June 7, 2020.



James E. Timberland
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

jet/scn