

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRIAN W KUHLMANN
Claimant

APPEAL NO. 20A-UI-07738-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARROLL COMM SCHOOL DISTRICT
Employer

OC: 03/22/20
Claimant: Appellant (5)

Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2020, reference 01, decision that allowed benefits to the claimant for the period beginning March 22, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on August 13, 2020. Claimant Brian Kuhlmann participated. Gary Bengtson represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, and WAGE-A.

ISSUES:

Whether the claimant has been able to work and available for work since March 22, 2020.
Whether the claimant has been temporarily and/or partially unemployed since March 22, 2020.
Whether the employer's account may be charged for benefits paid to the claimant for the period beginning March 22, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Brian Kuhlmann, is employed by the Carroll Community School District as a part-time seasonal sports announcer. The claimant has other full-time employment. The claimant's full-time employer temporarily laid him off effective March 27, 2020. The claimant established an original claim for unemployment insurance benefits the Iowa Workforce Development deemed effective March 22, 2020. Iowa Workforce Development set the weekly benefit amount at \$481.00. The claimant remained on temporary layoff from his full-time employment until May 28, 2020, when the full-time employer notified the claimant that the layoff would be permanent. The claimant's base period employers include the full-time employer in question and the Carroll Community School District. The claimant has performed the same part-time, seasonal services for the District for two decades or more. The claimant's wage for the District work is \$10.00 per hour.

At the time the claimant established his claim for benefits, he had last performed work for the District on February 11, 2020, which corresponded to the end of the basketball season. At that

point, the District had no further work for the claimant until track season, which was scheduled to begin in mid-March 2020 and continue through May 2020. The announcing work during the track season would have consisted of announcing at three or four at-home events. The District shut down its campuses on March 13, 2020 upon the recommendation of state authorities and to prevent community spread of COVID-19. The District's campuses remained closed through the end of the school year. Based on the shut-down, the District did not recall the claimant to the part-time seasonal employment during track season.

The District next had work for the claimant in June 2020 in connection with baseball season. During the week that ended June 27, 2020, the claimant worked for the District two days for a total of six hours, earning \$60.00. During the week that ended July 4, 2020, the claimant worked for District two days for a total of 5.5 hours, earning \$55.00. During the week that ended July 11, 2020, the claimant worked for the District for two days for a total of 5.5 hours, earning \$55.00. During the week that ended July 18, 2020, the claimant worked for the District three days for a total of 8.5 hours, earning \$85.00. During the week that ended July 25, 2020, the claimant worked for the District one day, 2.5 hours, earning \$25.00. The claimant did not report the baseball announcing wages when he made his weekly claims for the affected weeks. The claimant has performed all the work the District has had for him since March 22, 2020. None of the weekly baseball announcing wages exceeded one-fourth of the \$481.00 regular benefit weekly benefit amount.

By the time of the August 13, 2020 appeal hearing, the claimant had made consecutively weekly claims for the period of March 22, 2020 through August 8, 2020. The claimant reported wages for the week that ended March 28, 2020 that exceeded his weekly benefit amount plus \$15.00 and did not receive benefits for that week. The claimant received \$481.00 in regular benefits for each of the weeks between March 29, 2020 and June 6, 2020. The claimant earned no wages during that period. The claimant reported vacation pay for the week that ended June 13, 2020 that exceeded his weekly benefit amount and did not receive benefits for that week. The claimant received \$481.00 in regular benefits for each of the weeks between June 14, 2020 and August 8, 2020. Aside from baseball announcing wages, the claimant had no other wages during the period of June 14, 2020 through August 8, 2020.

For 16 out of 17 weeks between March 29, 2020 and July 25, 2020, the claimant received \$600.00 in Federal Pandemic Unemployment Compensation.

The claimant has at all relevant times remained able to work and available for his normal work with the District, as well as full-time employment.

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 Code section 96.19(38) 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(26) provides:

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

(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.

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 evidence establishes that the claimant has been able to work and available for work at all relevant times since establishing the claim for benefits that was effective March 22, 2020.

At the time the claimant established his original claim for benefits, the Carroll Community School District was no longer providing the same work the District had provided to the claimant during the base period. The District had closed its campuses on March 13, 2020 and therefore did not have the usual track announcing work available for the claimant. The claimant was at that point temporarily laid off from the District employment. The claimant remained temporarily laid off from the District employment until June 25, 2020, when he returned to perform additional announcing work in connection with the baseball season. During the weeks between June 21, 2020 and July 25, 2020, the claimant was partially unemployed. During those weeks, he earned wages from the employer, but not enough to trigger a deduction from unemployment insurance benefits, and by no means an amount exceeding his weekly benefit amount plus \$15.00. The claimant was once again temporarily laid off from the District employment effective July 21, 2020, by which time he had performed all the work the District had for him. The claimant is eligible for benefits for the period beginning March 29, 2020, provided he is meeting all other eligibility requirements.

The District's lack of announcing work during track season was based on COVID-19. A reasonable person would conclude that the claim for benefits has continued to be based, directly or indirectly, on COVID-19. 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 to the claimant for the period beginning March 29, 2020.

DECISION:

The July 2, 2020, reference 01, decision is modified as follows. The claimant has been able and available for work since establishing his claim for benefits. Since establishing the claim, the claimant has been temporarily unemployed and/or partially unemployed. The claimant is eligible for benefits for the period beginning March 29, 2020, provided he is otherwise eligible. The employer's account shall not be charged in connection with the COVID-19 based claim.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

jet/sam