

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KELLI K MICHEL**  
Claimant

**APPEAL NO. 078A-UI-07482-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAYPOINT**  
Employer

**OC: 06/08/08 R: 03**  
**Claimant: Appellant (4-R)**

Iowa Code section 96.4(3) – Able & Available  
Iowa Code section 96.19(38)(c) – Temporarily Unemployed  
Iowa Code section 96.7(2)(a)(2) – Still Employed - Same Hours, Same Wages  
871 IAC 23.43(4)(a) – Part-time Supplemental Employment

**STATEMENT OF THE CASE:**

Kelli Michel filed a timely appeal from the August 12, 2008, reference 01, decision that denied benefits effective June 8, 2008 and that concluded Ms. Michel had unduly restricted her work availability. After due notice was issued, a hearing was held on September 3, 2006. Ms. Michel participated. Barbara Ruppel, Assistant Executive Director, represented the employer. The administrative law judge took official notice of the August 12, 2008, reference 02 decision; the August 19, 2008, reference 03 decision; and the August 21, 2008, reference 04 decision. The administrative law judge took official notice of the Agency's administrative record regarding the claimant's base period and group code classification.

**ISSUES:**

Whether the claimant has met the work ability and work availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits.

Whether the claimant is still employed by Waypoint under the same hours and wages as existed during her "base period."

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelli Michel started working for Waypoint on January 2, 2007. Waypoint is a non-profit agency. Waypoint is not affiliated with a school district. Ms. Michel has worked as a part-time, on-call substitute teacher/child care provider. Ms. Michel has not been guaranteed any hours on the weekly schedule. Ms. Michel last performed work for Waypoint on May 28, 2008.

Ms. Michel is a student at the University of Iowa and is in her third semester. Ms. Michel did not take classes during the summer of 2008. Ms. Michel is taking 10 semester hours, three classes, during the fall 2008 semester.

While Ms. Michel has been employed by Waypoint, she has also been employed by Cedar Rapids Coffee Company as a part-time barista. Ms. Michel last worked for Cedar Rapids Coffee Company on or about June 13, 2008, when the business was evacuated and temporarily closed, due to flooding in downtown Cedar Rapids. Immediately prior to the flooding, Ms. Michel had been averaging 30 hours per week at the Cedar Rapids Coffee Company. Ms. Michel is still an employee of the Cedar Rapids Coffee Company and expects to return to that employment as soon as the business reopens. Ms. Michel has been promoted to the position of manager. It was the flood-related closing of Cedar Rapids Coffee Company that prompted Ms. Michel's application for unemployment insurance benefits. Workforce Development classified Ms. Michel as a "group 8" claimant at the time she established her claim for unemployment insurance benefits. This is a designation Workforce Development is currently using to identify those persons whose employment is affected by the extensive flooding that occurred in Iowa during June 2008.

Prior to the beginning of the summer, Ms. Michel had notified her supervisor at Waypoint that she would only be available to substitute on Fridays during the summer. Ms. Michel had also notified her supervisor at Waypoint that she would be available to substitute on Mondays, Wednesdays, and Fridays in the fall. Ms. Michel's supervisor at Waypoint is Aimee Lee, Site Director for the River Ridge Program. On or about June 20, Ms. Michel left a voice mail message for Ms. Lee. Ms. Michel inquired about her employment status, in light of the fact that she had not been asked to work since May 28, 2008. Ms. Michel received a voice mail message from Ms. Lee. Ms. Lee indicated that she was still considered an employee, that Ms. Lee had not needed Ms. Michel, and that Ms. Lee would contact Ms. Michel when she was needed. Ms. Lee had not needed Ms. Michel to work on Fridays, the only day of the week Ms. Michel had indicated she was available to work at Waypoint.

Ms. Michel has received mixed and/or contradictory information from her local Workforce Development Center regarding whether she is required to make an active search for new employment while she waits to return to Cedar Rapids Coffee Company. On August 12, 2008, a Workforce Development representative entered a reference 02 decision that told Ms. Michel she was no longer temporarily unemployed and was required to seek new employment by contacting two employers per week. On August 19, 2008, a Workforce Development representative entered a reference 03 decision that warned Ms. Michel that she was required to make two in-person job contacts each week she claimed unemployment insurance benefits. Ms. Michel contacted the Cedar Rapids Workforce Development Center and was told she did not need to apply for new employment while she waited to return to her employment at Cedar Rapids Coffee Company.

#### **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".

An individual shall be deemed temporarily unemployed if the individual is unemployed due to a plant shutdown, lack of work, or emergency from the individual's regular job or trade in which the individual worked and will again work, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

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

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.

871 IAC 23.43(4)(a) provides, in relevant part, as follows:

Supplemental employment.

An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

The weight of the evidence indicates that Ms. Michel is still employed by Waypoint on a part-time, on-call basis. In other words, Ms. Michel's employment relationship had not ended and is essentially the same as existed during her base period. The reduction in the actual number of hours Ms. Michel works for Waypoint has been attributable to limits Ms. Michel has placed on her availability because of her school schedule or other employment, not changes the employer had made to the employment. The weight of the evidence indicates that the employment at Waypoint has been supplemental employment, not Ms. Michel's primary employment. The weight of the evidence indicates that Ms. Michel's primary employment at the time she established her claim for benefits was Cedar Rapids Coffee Company. The weight of the evidence indicates that at the time of the appeal hearing on September 3, 2008, Ms. Michel was still attached to her employment at Cedar Rapids Coffee Company. The weight of the evidence indicates that at the time of the September 3, 2008 appeal hearing the only reason Ms. Michel was not performing work at Cedar Rapids Coffee Company was the temporary flood-related closure of that business.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes as follows. Ms. Michel is temporarily unemployed from Cedar Rapids Coffee Company. Accordingly, Ms. Michel is exempt from the work search requirement of Iowa Code section 96.4(3) so long as she continues to be attached to the employment at Cedar Rapids Coffee Company. Ms. Michel is eligible for benefits, provided she is otherwise eligible. Ms. Michel is still employed in the part-time supplemental employment under the same conditions as existed during her base period. Accordingly, Waypoint will not be charged for benefits paid to Ms. Michel so long as she continues as a part-time, on-call employee of Waypoint.

**DECISION:**

The Agency representative's August 12, 2008, reference 01, decision is modified as follows. The claimant is temporarily unemployed from Cedar Rapids Coffee Company (employer account number 336519). The claimant is exempt from the work search requirement of Iowa Code section 96.4(3) so long as she continues to be attached to the employment at Cedar Rapids Coffee Company. The claimant is eligible for benefits, provided she is otherwise eligible. The claimant is still employed in the part-time supplemental employment with Waypoint (employer account number 069796) under the same conditions as existed during her base period. Waypoint will not be charged for benefits paid to the claimant so long as she continues as a part-time, on-call employee of Waypoint.

This matter is remanded to the Claims Division for a review of Ms. Michel's work availability since the date of the appeal hearing, September 3, 2008. The Claims Division should determine whether Ms. Michel continues to be temporarily unemployed from Cedar Rapids Coffee Company (employer account number 336519) and whether she continues as an on-call employee of Waypoint (employer account number 069796).

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw