

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA M FATH

Claimant

GRAPETREE MEDICAL STAFFING INC

Employer

APPEAL NO: 20A-UI-06552-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Joshua Fath filed a timely appeal from the June 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Fath requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 24, 2020. Mr. Fath participated and presented additional testimony through Delora Fath. Zachary Myer, Human Resources Specialist, represented the employer. Exhibits 1 and A were received into evidence. The administrative law judge took official notice of the following Agency, administrative records: KCCO, DBRO and WAGE-A.

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: Joshua Fath established an original claim for benefits that was effective April 12, 2020 and has continued to make weekly claims since that time. At the time of the appeal hearing, Mr. Fath had most recently filed a claim for the week that ended July 18, 2020.

In April 2019, Mr. Fath began part-time, on-call employment with Grapetree Medical Staffing, Inc. Mr. Fath worked for Grapetree as a Certified Nursing Assistant. The employer placed Mr. Fath in temporary work assignments at nursing facilities in the Des Moines metropolitan area and at some facilities located outside the Des Moines Metropolitan area.

In March 2020, Mr. Fath notified the employer that he wanted to discontinue accepting working assignments out of concern for his "elderly" parents in light of the COVID-19 pandemic. Mr. Fath last performed work for the employer on March 19, 2020. Mr. Fath resides with his parents, who are 63 and 65 years old. Mr. Fath describes himself as overweight and a CPAP user, meaning that he suffers from sleep apnea. Mr. Fath's mother has no issues with her health. Mr. Fath's father also uses a CPAP, is a prostate cancer survivor, is not in treatment. A

doctor did not advise Mr. Fath to go off work. A doctor did not advise Mr. Fath to quarantine at home. Nor did Mr. Fath's father's doctor make any such request that Mr. Fath go off work or that anyone in the household quarantine. No one in the household had been exposed to COVID-19 and no one has contracted COVID-19.

Since Mr. Fath elected to go off work, the employer has continued to have the same work available for Mr. Fath. The employer and Mr. Fath each continue to view Mr. Fath as attached to the part-time, on-call employment. The employer has periodically checked in with Mr. Fath to inquire whether Mr. Fath is ready to return to work. Mr. Fath has continued to elect not to make himself available for additional work. The employer and the client facilities have taken proactive steps to prevent the spread of COVID-19. These steps include taking the temperature of those entering the facility, providing handwashing stations and hand sanitizer, providing personal protective equipment, and restricting those who may enter the nursing facility. The employer alerts staff to facilities that have had a COVID-19 issue at the time the employer offers available shifts and up until the time the assignment is to begin. Employees may decline such assignments.

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) provides:

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.

In connection with the Covid-19 pandemic and passage of the Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), 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). Mr. Fath's circumstances do not fall within any of these temporary exceptions to the able and available requirements. Mr. Fath has not been ill with COVID-19. Mr. Fath has not been exposed to COVID-19 and been directed to quarantine. Mr. Fath has not been caring for a family member sick with COVID-19. Mr. Fath is not immune compromised and has not been advised by a medical professional to quarantine. The employer had not shutdown or refused the work the employer has available. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020. On the other hand, the employer and client facilities have taken reasonable and appropriate steps to prevent the spread of COVID-19 and to alert staff to COVID-19 issues.

Since the claimant established the claim that was effective April 12, 2020, he has been on a leave of absence that he requested and that the employer granted. Since the claimant established the claim that was effective April 12, 2020, he has been voluntarily unemployed and not available for work. Benefits are denied effective April 12, 2020. The availability disqualification continued as of the July 24, 2020 appeal hearing.

DECISION:

The June 12, 2020, reference 01, decision is affirmed. Since the claimant established the claim that was effective April 12, 2020, he has been on a leave of absence that he requested and that the employer granted. Since the claimant established the claim that was effective April 12, 2020, he has been voluntarily unemployed and not available for work. Benefits are denied effective April 12, 2020. The availability disqualification continued as of the July 24, 2020 appeal hearing.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

jet/scn