

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KURTIS E WOODS
Claimant

FBG SERVICE CORPORATION
Employer

APPEAL 20A-UI-06320-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Kurtis Woods (claimant) appealed a representative's June 3, 2020, decision (reference 02) that concluded ineligibility to receive unemployment insurance benefits as of March 29, 2020, because a leave of absence was granted by FBG Service Corporation (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 21, 2020. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is eligible for total or partial unemployment benefits and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in February 2020, as a full-time custodian. The employer did not have work for the claimant due to the pandemic from March 13, 2020, through June 26, 2020. It called the claimant and told him there was no work. The employer advised the claimant to file for unemployment insurance benefits. The employer called the claimant back to work on June 29, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 29, 2020. His weekly benefit amount was determined to be \$347.00. The claimant received benefits of \$347.00 per week from March 29, 2020, to the week ending May 30, 2020. This is a total of \$3,123.00 in state unemployment insurance benefits after the separation from employment. He also received \$5,400.00 in Federal Pandemic Unemployment Compensation for the nine-week period ending May 30, 2020.

REASONING AND CONCLUSIONS OF LAW:

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 Code section 96.4(3) provides:

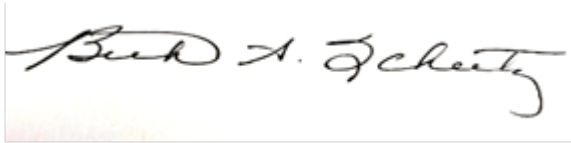
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

The employer did not have any work for the claimant for the fifteen-week period ending June 26, 2020. In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he is able to and available for work. Iowa Code § 96.4(3). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work during his separation from employment. Benefits are allowed as of March 29, 2020, provided the claimant is otherwise eligible.

DECISION:

The representative's June 3, 2020, decision (reference 02) is reversed. The claimant is considered to be available for work as of March 29, 2020. Benefits are allowed as of March 29, 2020, provided the claimant is otherwise eligible.

A handwritten signature in black ink that reads "Beth A. Scheetz". The signature is written in a cursive style with a horizontal line underneath it.

Beth A. Scheetz
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

bas/scn