

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASEY R RULLESTAD
Claimant

APPEAL NO. 07A-UI-08038-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GENE MILLER CO
MILLER THE DRILLER**
Employer

**OC: 07/01/07 R: 02
Claimant: Respondent (2)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 21, 2007, reference 02, decision that allowed benefits and that concluded the claimant was able to work and available for work effective July 22, 2007. After due notice was issued, a hearing was held on September 6 2007. The claimant did not respond to the hearing notice and did not participate. Sue Bush, Executive Assistant, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and the record of the claimant's weekly reports to the Agency via the automated telephone reporting system. Exhibit One was received into evidence. The administrative law judge had erroneously referred to Exhibit One as Exhibit A in the hearing record.

ISSUES:

Whether the claimant was able to work and available for work effective July 22, 2007.
Whether the claimant was temporarily unemployed effective July 22, 2007.
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On June 12, 2006, Kasey Rullestad commenced his employment as a full-time laborer with Gene Miller Company, doing business as Miller the Driller, on June 12, 2006. During the week of July 1-7, 2007, Mr. Rullestad was on a short-term lay-off. Mr. Rullestad established a claim for unemployment insurance benefits that was effective July 1, 2007 and received unemployment insurance benefits for the benefit week ending July 7, 2007. Mr. Rullestad then returned to his previous full-time position and continued to work full-time until he separated from the employer on August 15, 2007.

On July 24, 2007, Iowa Workforce Development mailed the employer a new notice of claim concerning an additional claim for benefits purportedly filed by Mr. Rullestad. Mr. Rullestad had not filed an additional claim, had not requested benefits beyond the benefit week that ended July 7, 2007 and did not receive benefits beyond that one-week period.

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 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 96.19(38)(c).

An individual is not eligible for unemployment insurance benefits if the individual's availability for other work is unduly limited because the individual is working to such a degree that removes the individual from the labor market. 871 IAC 24.23(23).

The evidence in the record indicates that Mr. Rullestad returned to his full-time work after the July 1-7, 2007 temporary unemployment. The evidence indicates that effective July 8, 2007, Mr. Rullestad was subject to, but no longer met, the availability requirements of Iowa Code section 96.4(3) because he had returned to the full-time employment. The evidence indicates that this continued to be the case up to the August 15, 2007 separation from the employment. Accordingly, Mr. Rullestad was not eligible for unemployment insurance benefits during the period of July 8 through August 15, 2007. Mr. Rullestad's eligibility for unemployment insurance benefits *after* the August 15, 2007 separation would need to be established if there is an additional claim for benefits on or after that date.

The Agency's records indicate that Mr. Rullestad received no additional unemployment insurance benefits beyond the benefit week that ended July 7, 2007, during which week he was temporarily unemployed and eligible for benefits. Accordingly, there has been no overpayment of benefits. See Iowa Code section 96.3(7).

DECISION:

The Agency representative's August 21, 2007, reference 02 decision is reversed. Effective July 8, 2007, the claimant no longer met the able and available requirements of Iowa Code

section 96.4(3) and, accordingly, was no longer eligible for benefits. The claimant's eligibility for unemployment insurance benefits *after* the August 15, 2007 separation would need to be established if there is an additional claim for benefits on or after that date.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs