

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACK MASSE
Claimant

G M R I INC
Employer

APPEAL NO. 20A-UI-07098-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jack Masse filed a timely appeal from the June 24, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Mr. Masse 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 August 4, 2020. Mr. Masse participated and presented additional testimony through Sonya Masse. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. 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 15, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jack Masse established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set his weekly benefit amount at \$208.00. Mr. Masse has made weekly claims for the 20 consecutive weeks between March 15, 2020 and August 1, 2020. For each week of the claim, Mr. Masse reported that he was not working, was able to work and available for work, had not refused any work, and had no wages, vacation pay or holiday pay. For each of the weeks between March 15, 2020 and June 20, 2020, IWD paid \$208.00 in regular benefits to Mr. Masse. For each of the weeks between March 29, 2020 and June 20, 2020, IWD also paid Mr. Masse \$600.00 in Federal Pandemic Unemployment Compensation.

Mr. Masse is employed by G M R I, Inc., doing business as Olive Garden. Mr. Masse worked for Olive Garden as a host since 1994. For the last three years, the employment has been part-time, 25 to 35 hours per week. Mr. Masse's most recent hourly wage is \$15.40. Mr. Masse last performed work for Olive Garden on March 12, 2020. At that time, Mr. Masse requested a leave of absence due to the COVID-19 virus. Mr. Masse had not wanted to go off work, but did so at his family's urging. Mr. Masse is 77 years old and has diabetes. The employer approved the leave request. On March 16, 2020, Mr. Masse's primary care doctor completed a Health Care

Provider Statement, referenced the diabetes diagnosis and that indicated Mr. Masse needed to be on a continuous leave of absence during the period of March 12, 2020 through May 1, 2020. While the provider statement does not explicitly reference COVID-19, a concern about COVID-19 was the basis for the document.

On March 17, 2020, Olive Garden closed its doors in response to Governor Reynolds' March 17, 2020 Public Health Disaster Emergency proclamation that included a directive that restaurants close for dine-in service.

Within a couple weeks of going off work, Mr. Masse was ready to return to work. Mr. Masse was worried that his health would suffer if he did not keep himself busy with work. Mr. Masse contacted the employer to advise that he was ready to return to work. The employer did not have any work for Mr. Masse at that time. When the employer reopened its doors, Mr. Masse again contacted the employer to advise that he was ready to return to work. The employer advised at that time that the employer did not have a need for hosts at that point. Mr. Masse has maintained contact with the employer, but the employer has not recalled Mr. Masse to the 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, in relevant part, as follows:

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.

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 regular 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). These scenarios included circumstances wherein a worker is immune-compromised and a doctor has advised the worker to quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

The weight of the evidence establishes that Mr. Masse was on a COVID-19 based leave of absence upon the advice of his physician during the period of March 12, 2020 through May 1, 2020. Pursuant to the medical provider's certification, Mr. Masse was not released to return to work until May 1, 2020. While Mr. Masse would not meet the regular able and available requirements during the leave period, he would meet the COVID-19 modified able and available requirements, because he was immune-compromised and was advised by his doctor to quarantine.

The weight of the evidence establishes that that Mr. Masse has been able to work, available for work, but laid off since May 1, 2020. Mr. Masse made the employer aware that he was ready to return to work, but the employer has not have work available.

Mr. Masse is eligible for benefits for the period beginning March 15, 2020, provided he meets all other eligibility requirements.

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).

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 any benefits paid to the claimant for the period beginning March 15, 2020.

DECISION:

The June 24, 2020, reference 01, is reversed. The claimant has met the able and available requirements or the COVID-19 modified able and available requirements since establishing the claim for benefits that was effective March 15, 2020. Accordingly, the claimant is eligible for benefits for the period beginning March 15, 2020, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits for the period beginning March 15, 2020 in light of the COVID-19 basis for the claim.



James E. Timberland
Administrative Law Judge

September 4, 2020
Decision Dated and Mailed

jet/scn