

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TREVOR HUBER
Claimant

ONE SOUL LLC
Employer

APPEAL 20A-UI-12924-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 8, 2020, (reference 02) unemployment insurance decision that denied benefits based upon being able to and available for work for the week ending May 10, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on December 11, 2020. Claimant participated. Employer participated through Owner Lisa Benson. The administrative law judge took judicial notice of the administrative records.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending March 15, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant started working as a part-time sales man for the employer, One Soul, from January 2019 until September 20, 2016. His immediate supervisor was Manager Kolton Martin. His hourly wage was \$9.50 per hour. One Soul had work available for the claimant to work throughout the entire period listed below.

The claimant's regular employer is PC on Main. The claimant works as a bartender at a bar named Derringers owned by PC on Main in Cedar Falls. His schedule for this position runs from Thursday through Saturday until 4:00 a.m. each morning. The claimant would have worked at Derringers if work had been available.

The administrative record shows claimant reported zero earnings beginning with the week ending March 14, 2020 and the week ending April 11, 2020. Non-essential businesses were closed due to an order issued by Governor Kim Reynolds regarding Covid19. From April 5, 2020 to April 11, 2020, claimant received \$113.05.

Over the next month and a half from April 11, 2020 to May 30, 2020, the claimant was able to coordinate with One Soul's management to schedule him fewer hours, so he could still receive unemployment for these weeks. The claimant received \$39.24 in earnings from One Soul for the week ending April 18, 2020. He received \$71.00 in earnings from One Soul for the week ending April 25, 2020. The claimant received \$116.38 for the week ending May 2, 2020. The claimant received \$60.00 for the week ending May 9, 2020. The claimant reported receiving \$75.81 in earnings for the week ending May 16, 2020. The claimant reported receiving \$71.54 in earnings for the week ending May 23, 2020. He reported receiving \$84.08 in earnings for the week ending May 30, 2020. Derringers was still closed due to a less restrictive order issued by Governor Kim Reynolds during this period.

The claimant stopped filing weekly claims from June 6, 2020 to August 28, 2020. During this period, Derringers and One Soul scheduled him for full hours such that he stopped making continuing claims.

The claimant was not able to work at Derringers the final week of August and first week of September 2020 due to another shutdown notice. The claimant did not make a continuing weekly claim for the week ending August 28, 2020. The claimant reported earning zero earnings for the week ending September 5, 2020. The claimant reported earning \$46.00 the week ending September 12, 2020. Work was not available at Derringers due to another order issued by Governor Kim Reynolds.

On September 17, 2020, the claimant submitted his two week notice that he was going to resign from his sales position at One Soul. The claimant was returning to work at Derringers. The claimant was also returning to school full time to pursue his Master's Degree at the University of Northern Iowa. He has 20 hours of clinical hours during the week. Given all of these obligations, the claimant could no longer work at One Soul and would focus on school until the summer of 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer and the claimant was not able and available for work after separating from the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following

reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(26) The claimant left to go to school.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The claimant testified he left work in become a full-time student. The claimant said he also left because he could not fulfill his work obligations with Derringers and the full class schedule. This is not a reason for quitting attributable to the employer. While claimant's leaving was due to compelling personal reasons it was not for a good-cause reason attributable to the employer according to Iowa law. The next issue to evaluate is whether the claimant was able, available and actively and earnestly seeking work after separating from the employer.

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(1)a 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.

(1) *Able to work*. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy*. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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 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.

From the week ending March 5, 2020 to the week ending April 5, 2020, the claimant could not work at One Soul or Derringers due to Governor Kim Reynolds' shutdown order of all nonessential business in the area. The claimant was able and available for this period in time.

For the week ending April 11, 2020, the claimant was not unemployed because he earned his weekly benefit amount plus 15 dollars. Since the claimant was not unemployed during this week, the issue of whether he is able and available is moot.

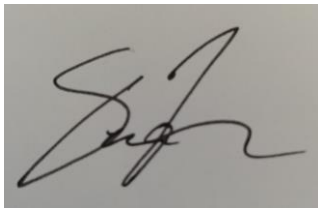
From the week ending April 11, 2020 to the week ending May 30, 2020, the claimant was collaborating with the management of One Soul to reduce his hours, so that he would continue to be eligible for benefits. Since the claimant was restricting his availability during this time in order to maintain his eligibility for benefits, he was not able and available during this period in time.

The claimant did not file weekly claims from the week ending July 25, 2020 to August 28, 2020 because he was working a full-schedule between hours at Derringers and One Soul. As a result, claimant was not able and available to work during this period in time.

From the week ending September 5, 2020 to the week ending September 12, 2020, claimant could not work at Derringers and reported earnings below his weekly benefit amount. The claimant is able and available for those weeks.

DECISION:

The October 8, 2020, (reference 02) unemployment insurance decision is reversed. The claimant was able and available for the period from the week ending March 5, 2020 to the week ending April 5, 2020. He was not able and available from the week ending April 11, 2020. He was not able and available from the week ending April 11, 2020 to May 30, 2020. He was not able and available from the week ending July 25, 2020 to August 28, 2020. The claimant is able and available for those weeks. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. This matter is remanded to the Benefits Department to correct the errors the claimant has in his earning's reports throughout this period.



Sean M. Nelson
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December 31, 2020
Decision Dated and Mailed

smn/mh