

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAESON A KALMONI
Claimant

APPEAL NO. 20A-UI-10289-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 04/05/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

STATEMENT OF THE CASE:

Jaeson Kalmoni filed a timely appeal from the August 19, 2020, reference 02, decision the denied benefits for the period beginning April 5, 2020, based on the deputy's conclusion that Mr. Kalmoni was still employed under the same hours and wages and was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on October 9, 2020. Mr. Kalmoni participated. Amanda Berg, Employment Specialist, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A. The administrative law judge took official notice of the Agency's suspension of work search requirement during the period of April 1, 2020 through September 5, 2020.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning April 5, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning April 5, 2020.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jaeson Kalmoni established an original claim for benefits that was effective April 5, 2020. Iowa Workforce Development set his weekly benefit amount for regular benefits at \$194.00. Mr. Kalmoni's base period consisted of the four quarters of 2019. Express Services is Mr. Kalmoni's most recent base period employer and was Mr. Kalmoni's current employer at the time Mr. Kalmoni established his claim for benefits. After Mr. Kalmoni established his claim for benefits, he made weekly claims for each week between April 5, 2020 and September 19, 2020.

For the week that ended April 11, 2020, Mr. Kalmoni reported zero wages and received \$194.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC).

For the week that ended April 18, 2020, Mr. Kalmoni reported \$208.00 wages and received \$34.00 in regular benefits and \$600.00 in FPUC benefits.

For the weeks that ended April 25, May 2 and May 9, 2020, Mr. Kalmoni reported wages that exceeded his \$194.00 regular weekly benefit amount by more than \$15.00. Mr. Kalmoni did not receive benefits for the three-week period April 19, 2020 through May 9, 2020.

For the week that ended May 16, 2020, Mr. Kalmoni reported \$26.00 in wages. Mr. Kalmoni has not yet received any benefits for the week that ended May 16, 2020.

For each of the 12 weeks between May 17, 2020 and August 8, 2020, Mr. Kalmoni reported zero wages, received \$194.00 in regular benefits, and received \$600.00 in FPUC benefits.

For each of the six weeks between August 9, 2020 and September 19, 2020, Mr. Kalmoni reported zero wages. Mr. Kalmoni has not yet received any benefits for the weeks between August 9, 2020 and September 19, 2020.

At the time Mr. Kalmoni established his claim for benefits, he was working for Express Services in a full-time work assignment as an assembler at ESP International. Mr. Kalmoni's work hours in the assignment were 7:00 a.m. to 4:00 p.m., Monday through Friday. The work paid \$13.00 an hour. Mr. Kalmoni remained in the full-time employment until Monday, May 11, 2020.

On Monday, April 6, 2020, Mr. Kalmoni notified Express Services that he had been tested for COVID-19 and would return to work on Thursday, April 9 at the earliest. Mr. Kalmoni had been tested for COVID-19 on Friday, April 3, 2020 and received this COVID-19 test result on Friday April 10, 2020. Mr. Kalmoni remained off work while he waited for his test result. Mr. Kalmoni did not perform any work during the week that April 11, 2020.

Mr. Kalmoni returned to work on Monday, April 13, 2020. Mr. Kalmoni worked his shifts on Monday and Tuesday of that week, 16 hours in total. Mr. Kalmoni's wages for the two days totaled \$208.00. On Wednesday, April 15, Mr. Kalmoni woke with a fever. Mr. Kalmoni sent a text message to his supervisor at ESP in which he told the supervisor about his fever. The supervisor told Mr. Kalmoni that he should go to the doctor and that he would not be allowed to return to work until the following Monday, April 20, 2020, provided his health issue had resolved by then. Mr. Kalmoni went to the doctor, was diagnosed with a minor respiratory issue, which resolved over the weekend.

On April 20, 2020, Mr. Kalmoni returned to work at the ESP assignment and worked a 40-hour week. Mr. Kalmoni's earned wages for the week that ended April 25, totaled \$520.00. Mr. Kalmoni continued in the full-time assignment throughout the week that ended May 2 and again earned \$520.00 in wages.

Mr. Kalmoni returned to the assignment on Monday, May 4, 2020. However, over the weekend, Mr. Kalmoni had suffered a bad fall in the shower. In the course of the fall, Mr. Kalmoni hit his head on the toilet and landed on the floor in his bathroom. Mr. Kalmoni notified Express Services of his fall, said he was on his way to the doctor and planned to report for work on Monday. Mr. Kalmoni consulted a doctor in connection with his fall and was released to return to work, provided he felt well enough. The doctor counseled Mr. Kalmoni not to over-exert himself. The doctor referred Mr. Kalmoni for physical therapy. On Tuesday, May 5, 2020, Mr. Kalmoni notified Express Services that he was hurting from the work he performed on Monday and was going to attempt to work a half day at ESP. Mr. Kalmoni ended up working his entire shift on Tuesday and Wednesday. His wages for those three days of work totaled

\$312.00. On Thursday, May 7, Mr. Kalmoni notified Express Services that he was in a lot of pain and would provide a further update. Mr. Kalmoni called back that day and stated his muscles were swollen and pinching a nerve. Mr. Kalmoni stated that he needed that day off and the next day off and would plan to return to work on Monday, May 11, 2020.

Mr. Kalmoni returned to the employment on Monday, May 11, 2020, but left work early to go to the chiropractor. Mr. Kalmoni notified Express Services that he had left early, that he was in pain due to lifting, that he had notified his supervisor, and that he had a physical therapy appointment set after his shift that day.

On May 11, 2020, ESP ended Mr. Kalmoni's assignment due to his non-work related injury. Express Services notified Mr. Kalmoni that the assignment was ended and agreed to look for another assignment for him that did not involve heavy lifting. However, the employer did not offer Mr. Kalmoni another assignment.

At the time Mr. Kalmoni separated from the employment on May 11, 2020, Iowa Workforce Development had suspended the work search requirement due to the economic impact of the COVID-19 pandemic. IWD had suspended the work search at the beginning of April 2020.

During the week that ended May 16 and May 23, 2020, Mr. Kalmoni was dealing with his pain issues, was in physical therapy, and was subject to a 10 to 15-pound lifting restriction.

The work search requirement was suspended through the benefit week that ended September 5, 2020. The requirement that Mr. Kalmoni remain able to work and available for work was not suspended. From the time of the August 10, 2020 derecho through the majority of the benefit week that ended September 19, 2020, Mr. Kalmoni remained preoccupied with dealing with damage to his home and personal property arising from the August 10, 2020 derecho.

Effective September 6, 2020, Mr. Kalmoni was required to make an active and earnest search for new employment. Mr. Kalmoni did not keep the required log of his work search efforts and was unable at the time of the appeal hearing to name a job contact for the two-week period of September 6, 2020 through September 19, 2020. Mr. Kalmoni engaged in little if any search for new employment during the period following the August 10, 2020 derecho that damaged him home.

On September 18, 2020, Mr. Kalmoni received and accepted an offer part-time employment that he began on September 22, 2020. The work provided 20 to 20 hours of work per week and paid \$13.00. Mr. Kalmoni discontinued his claim for benefits after the week that ended September 19, 2020.

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(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:

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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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.

If a claimant 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).

Mr. Kalmoni did not meet the able and available requirements during the period of April 5, 2020 through the benefit week that ended May 9, 2020 and is not eligible for benefits for that period. The employer had full-time employment for Mr. Kalmoni during each of those weeks. In other words, the employer continued to have the same work hours and wages available. During the week that ended April 11, 2020, Mr. Kalmoni was unable to work due to illness and unavailable for work. During the week that ended April 18, 2020, Mr. Kalmoni was unable to work due to illness and unavailable for work during the majority of the week. During weeks that ended April 25, 2020 and May 2, 2020, Mr. Kalmoni was working full-time, was not unemployed to any extent, and therefore did not meet the "availability" requirement. During the week that ended May 9, 2020, Mr. Kalmoni was able to work for the majority of the week and was available for work for the majority of the week. However, Mr. Kalmoni's wages for the week exceeded his weekly benefit amount by more than \$15.00 and, therefore, he cannot be considered partially unemployed that week.

During the weeks that ended May 16 and May 23, 2020, Mr. Kalmoni was participating in a physical therapy and was subject to a 10 to 15-pound lifting restriction. The week of May 10-16 started with Mr. Kalmoni needing to leave work shortly into his shift due to pain and the need to

consult with a chiropractor. Mr. Kalmoni has presented insufficient evidence to establish that he was physically able to work during the weeks that ended May 16 and May 23, 2020 and is not eligible for benefits for those weeks.

In light of the suspension of the work search requirement, Mr. Kalmoni met the able and available requirements during the period of May 23, 2020 through August 8, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements.

Mr. Kalmoni was not available for work within the meaning of the law during the benefit weeks between August 9, 2020 and September 19, 2020 and is not eligible for benefits for that period. During that time, Mr. Kalmoni was preoccupied with dealing with the damage to his home and personal property. Mr. Kalmoni presented insufficient evidence to prove that he was available for work during the period of August 10 through September 19, 2020 or that he was engaged in an active and earnest search for new full-time employment during the period of September 6 through September 19, 2020. Mr. Kalmoni's September 18, 2020 acceptance of part-time employment to start on September 22, 2020 did not satisfy the availability requirement for the week that ended September 19, 2020.

DECISION:

The August 19, 2020, reference 02, decision is modified in favor of the claimant/appellant as follows. The claimant did not meet the able and/or available requirements during the benefit weeks between April 5, 2020 and May 23, 2020 and is not eligible for benefits for that period. The claimant met the able and available requirements for the period of May 24, 2020 through August 8, 2020 and is eligible for benefits for that period, provided he meets all other eligibility requirements. The claimant did not meet the availability requirements during the benefit weeks between August 9, 2020 and September 19, 2020 and is not eligible for benefits for that period.

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law for some of the weeks of your claim. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**



James E. Timberland
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

jet/scn