

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KELSIE D DOCK**  
Claimant

**KIM'S FOODS INC – WENDY'S**  
Employer

**APPEAL NO. 20A-UI-06639-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Respondent (2/R)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 12, 2020, reference 02, decision that allowed benefits to the claimant for the period beginning April 12, 2020, provided the claimant met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, but on a short-term layoff. After due notice was issued, a hearing was held on July 27, 2020. Claimant Kelsie Dock participated. Kim Slifka, General Manager, represented the employer. Exhibits 2 through 6 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX, WAGE-A, and the May 20, 2020, reference 01, decision.

**ISSUES:**

Whether the claimant has been able to work and available for work since April 12, 2020.  
Whether the claimant has been temporarily and/or partially unemployed since April 12, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelsie Dock established an original claim for benefits that was effective April 12, 2020. Iowa Workforce Development set her weekly benefit amount at \$326.00. By the time of the July 27, 2020 appeal hearing, Ms. Dock had made weekly claims for 14 consecutive weeks between April 12, 2020 and July 18, 2020. IWD paid \$326.00 in regular benefits and \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for each of the weeks between April 12, 2020 and July 18, 2020. The primary base period employer in connection with the claim is Kim's Foods, Inc., doing business as Wendy's.

Ms. Dock was employed by Kim's Foods as a full-time shift manager from July 2019 and last performed work for the employer on April 11, 2020. Kim Slifka, General Manager, was Ms. Dock's immediate supervisor. Ms. Dock completed her shift on April 11 2020. Ms. Dock was at that point next scheduled to work on April 15, 16, 17, 18 and 20. However, on Wednesday, April 15, 2020, and Thursday, April 16, 2020, Ms. Dock notified Ms. Slifka that she needed to be absent due to illness. Ms. Dock asserted on April 16 that she had just thrown up and that one of her children was sick.

On the afternoon of Saturday, April 18, 2020, Ms. Dock sent a text message to Ms. Slifka in which she wrote, "I'm done working there. I have to quarantine myself. Sorry I will miss u guys. My voice is completely gone." Ms. Dock has decided on her own that her purported illness was COVID-19. Ms. Dock elected not to take her temperature to see whether she had a fever. Ms. Dock elected not to be tested for COVID-19. Ms. Dock elected not to consult a doctor. On April 18, 2020, Ms. Slifka provided a prompt reply to Ms. Dock's text message, in which she gave Ms. Dock the benefit of the doubt and went along with the notion that what Ms. Dock asserted she had was COVID-19. Ms. Slifka wrote, "You know you can take 14 days off or you sure you want to quit. Let me know so I can let Corp know." A few hours later, Ms. Dock sent another text message, in which she wrote, "Sent to Corp already?" Ms. Slifka promptly replied, "No was waiting to hear from you but I'm home now." Ms. Dock did not respond. However, on that same day, Ms. Dock completed an online application for unemployment insurance benefits to establish the claim for benefits that was deemed effective April 12, 2020.

On the morning of Sunday, April 19, 2020, Ms. Slifka sent Ms. Dock a text message in which she wrote, "Need to know by 4 o'clock today what you want to do." Ms. Dock waited until the morning of Monday, April 20, 2020 to respond as follows: "I don't think they will even give me a paper to go back to work after the 14 days are over so I guess I have to quit." Ms. Dock advised that her purported illness resolved within 10 days of its purported onset. On April 24, 2020, Ms. Slifka documented that Ms. Dock had voluntarily quit the employment and was ineligible for rehire.

The next contact between the parties occurred on May 7, 2020, when Ms. Dock sent a text message to Ms. Slifka asking whether Ms. Slifka wanted Ms. Dock's work keys. Ms. Slifka replied, "Yes." Ms. Dock then sent a text message asking whether she had one or two checks waiting. Ms. Slifka replied there was one. Ms. Dock drove through the restaurant's drive through lane to return her keys and collect her final check. Neither party took the conversation further.

On May 20, 2020, Iowa Workforce Development mailed a reference 01 decision to the parties that concluded, based on information from Ms. Dock, that she had been discharged from the employment for no disqualifying reason and had not voluntarily quit. The employer did not appeal the decision and it became a final agency decision, however erroneous.

#### **REASONING AND CONCLUSIONS OF LAW:**

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

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:

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 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 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 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 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). See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

The weight of the evidence establishes that Ms. Dock has been able to work, but intentionally unavailable for work since she filed her claim for benefits. At no point was Ms. Dock on a short-term layoff. Ms. Dock's purported illness and purported need to quarantine in April 2020 had nothing to do with COVID-19 beyond the pandemic providing a spurious pretext for Ms. Dock to feign illness, to claim a need to quarantine, to assert a bogus need to separate from the employment, and to establish and continue a claim for unemployment insurance benefits under false pretenses. The employer continued to have work available for Ms. Dock during the weeks that ended April 18 and April 25, 2020, but Ms. Dock elected not to make herself available and instead played a game of cat and mouse with the employer. The employer's account will not be charged for benefits for those weeks. Benefits are denied for the period beginning April 12, 2020. The availability disqualification continued as of the July 27, 2020 appeal hearing.

This matter is remanded to the Investigations & Recovery Unit for entry of overpayment decisions for the regular and FPUC benefits the claimant received in connection with her claim and further action as the Investigations & Recovery Unit deems appropriate.

**DECISION:**

The June 12, 2020, reference 02, is reversed. The claimant has been able to work, but intentionally unavailable for work since she filed her claim for benefits. At no point was the claimant on a short-term layoff. Benefits are denied for the period beginning April 12, 2020. The availability disqualification continued as of the July 27, 2020 appeal hearing.

This matter is remanded to the Investigations & Recovery Unit for entry of overpayment decisions for the regular and FPUC benefits the claimant received in connection with her claim and further action as the Investigations & Recovery Unit deems appropriate.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. 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 this decision becomes final or if you are not eligible for Pandemic Unemployment Assistance (PUA), you will have an overpayment of benefits that you will be required to repay.* Individuals who do not

qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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James E. Timberland  
Administrative Law Judge

September 9, 2020  
Decision Dated and Mailed

jet/sam