

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RANDAL L FINCH**  
Claimant

**APPEAL NO: 20A-UI-05766-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIVERSAL PROTECTION SERVICE LLC**  
Employer

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

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Iowa Code § 96.4(3) – Able & Available  
Iowa Code § 96.19(38)(c) – Temporary Unemployment

**STATEMENT OF THE CASE:**

The claimant, Randal Finch, filed a timely appeal from the June 4, 2020, reference 03, decision that denied benefits effective April 5, 2020, based on the deputy's conclusion that the claimant had requested and been granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 14, 2020. Mr. Finch participated personally and was represented by non-attorney representative Dustin Vroegh. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into the hearing record. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

**ISSUES:**

Whether Mr. Finch was able to work and available for work during the period of April 5, 2020 through through June 27, 2020.

Whether Mr. Finch was temporarily laid off during the period of April 5, 2020 through June 27, 2020.

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

**FINDINGS OF FACT:**

The claimant, Randal Finch, is the appellant in this matter. Randal Finch established an original claim for benefits that was effective April 5, 2020. Iowa Workforce Development set his weekly benefit amount at \$431.00. IWD paid \$3,448.00 in regular benefits to Mr. Finch for eight weeks between April 5, 2020 and May 30, 2020. IWD also paid Mr. Finch \$4,800.00 in Federal Pandemic Unemployment Compensation for eight weeks between April 5, 2020 and May 30, 2020.

Mr. Finch is attached to full-time employment with Universal Protection Service, L.L.C. Mr. Finch is a security guard assigned to the Whirlpool Amana manufacturing plant. Mr. Finch's duties involve patrolling the plant grounds, checking trucks in and out, and distributing ear plugs. The work hours are midnight to 8:00a.m., five days per week. Mr. Finch usually has Friday night and

Saturday night off. Account Manager Monte Meeks is Mr. Finch's immediate supervisor. Mr. Finch last performed work for the employer on March 19, 2020.

In October 2019, Mr. Finch was diagnosed with lung cancer. Mr. Finch has undergone chemotherapy. Mr. Finch was scheduled to undergo pneumonectomy, removal of one of his lungs in spring 2020. The provider cancelled and postponed the surgery in response to the COVID-19 pandemic. When Mr. Finch learned in mid-March 2020 that his lung surgery had been cancelled, he contacted the employer to indicate that he was ready to return to work. In light of Mr. Finch's cancer, chemotherapy, compromised immune system in the context of COVID-19, the employer declined to allow Mr. Finch to return to the employment at that time. Mr. Finch's doctor had advised Mr. Finch that he was immune-compromised and that Mr. Finch would "be dead in 72 hours" if he contracted COVID-19. Mr. Finch has continued off work since March 19, 2020. Mr. Finch's pneumonectomy was rescheduled to June 18, 2020. Mr. Finch underwent the procedure as scheduled and remained in the hospital until July 1, 2020. Mr. Finch's doctor has advised Mr. Finch that there will be a two-month recovery period before Mr. Finch will be released to return to any work.

### **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) and (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.

(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.

...

(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.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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

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).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In response to the economic impact of COVID-19, 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.

The evidence in the record establishes that Mr. Finch was able to work, was available for work, but was temporarily unemployed from the time he established the original claim for benefits that was effective April 5, 2020 through the benefit week that ended June 13, 2020. During that time, Mr. Finch remained ready and willing to report to the full-time employment, despite his doctor's advice that exposure to COVID-19 would quickly kill him in light of his diminished lung capacity and compromised immunity due to chemotherapy. A reasonable person would conclude that Mr. Finch's doctor's blunt advice amounted to the doctor advising Mr. Finch to quarantine. The employer declined to expose Mr. Finch to the risk identified by Mr. Finch's doctor and declined to expose itself to the inherent liability. Mr. Finch has not asked for a leave of absence. Mr. Finch is eligible for benefits for the period of April 5, 2020 through June 13, 2020, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits paid to Mr. Finch for the period of April 5, 2020 through June 13, 2020.

During the week of June 14-20, Mr. Finch became no longer able to work and no longer available for work, due to undergoing the pneumonectomy, being hospitalized following the procedure, and being kept entirely off work by his doctor while he recovered from removal of his lung. Mr. Finch is not eligible for benefits for the period beginning June 14, 2020. The able and available disqualification continued through the benefit week that ended June 27, 2020, the most recent week for which Mr. Finch has filed a claim for benefits. The able and available disqualification would continue until Mr. Finch's doctor releases Mr. Finch to return to work. Mr. Finch would have to meet all other eligibility requirements.

#### **DECISION:**

The June 4, 2020, reference 03, decision is modified in favor of the claimant/appellant as follows. In light of the Agency's published COVID-19 exceptions to the able and available requirements, the claimant met those requirements for the period of April 5, 2020 through the benefit week that ended June 13, 2020 and was temporarily laid off during that period. The claimant is eligible for benefits for April 5, 2020 through the benefit week that ended June 13, 2020 provided he meets all other eligibility requirements. In light of the COVID-19 basis for the temporary layoff, the employer's account shall not be charged for benefits paid to the claimant for April 5, 2020 through the benefit week that ended June 13, 2020.

The claimant was no longer able to work and available for work effective the benefit week that began June 14, 2020. This was due to the claimant's illness, surgery, hospitalization, and due to the claimant not being released by his doctor to return to work. Benefits are denied effective June 14, 2020. The able and available disqualification continued through the benefit week that ended June 27, 2020, the most recent week for which the claimant filed a claim for benefits. The able and available disqualification would continue until the claimant's doctor releases the claimant to return to work. The claimant must meet all other eligibility requirements.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits for the period beginning June 14, 2020. 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. 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

July 23, 2020  
Decision Dated and Mailed

jet/sam