

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**REBECCA R ZAPPA**  
Claimant

**MENARD INC**  
Employer

**APPEAL NO. 20A-UI-07305-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Rebecca Zappa filed a timely appeal from the June 26, 2020, reference 01, decision denied benefits effective April 5, 2020, based on the deputy's conclusion that Ms. Zappa requested and was approved for a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on August 6, 2020. Ms. Zappa participated. Paul Hammel represented the employer and presented testimony through Brian Sampson. Exhibits 1 through 4 and A through J were received into evidence. The administrative law judge took official notice of the following Agency's administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of April 5, 2020 through July 4, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Rebecca Zappa is employed by Menard, Inc. as a part-time cashier. Ms. Zappa has been with the employer for about three years. She generally works 26 to 35 hours per week. Her wage for the last year has been \$11.50 per hour. Casey Burney, Front End Supervisor, is Ms. Zappa's immediate supervisor.

Effective Monday, April 6, 2020, Ms. Zappa went off work due to a non-work related respiratory illness. Before Ms. Zappa went off work, she worked 7.62 hours on April 5, 2020. Her wages for that work totaled \$87.63. On April 6, 2020, Ms. Zappa was examined by a physician and was advised to self-quarantine at home for the next 14 days, due to the possibility that she might have COVID-19 virus. On April 7, 2020, Ms. Zappa was tested for the COVID-19 virus, which yielded a negative test result. Ms. Zappa continued off work due to the non-COVID-19 respiratory illness, but remained at increased risk of contracting COVID-19, and of experiencing complications if she did contract the virus, due to her respiratory illness.

On April 17, 2020, Ms. Zappa had a follow-up appointment with the physician, who advised her to remain off work for two additional weeks due to the unresolved non-COVID-19 respiratory illness. On or about April 17, the employer completed a Menards Emergency Leave Request for COVID-19 Related Circumstances on Ms. Zappa's behalf. The employer approved a leave of absence through May 1, 2020. Ms. Zappa remained at increased risk of contracting COVID-19, and of experiencing complications if she did contract the virus, due to her respiratory illness.

Ms. Zappa returned to work on May 5, 2020. By that time, her respiratory illness had resolved. Ms. Zappa ended up only working 1.5 hours on May 5. During her shift, she experienced a near syncopal event. On May 5, 2020, Ms. Zappa was examined by a physician, who advised her to stay off work for the next seven to 10 days due to illness and while she underwent additional assessment. Ms. Zappa describes the illness she was dealing with at that time as "pockets of bile" in her intestines.

On May 8, 2020, Ms. Zappa had a follow-up appointment with physician assistant, who released Ms. Zappa to return to work effective May 17, 2020, but restricted her to working no more than 25 hours per week during the period of May 17 through May 31, 2020.

On May 15, 2020, Ms. Zappa's medical provider issued a medical release that indicated Ms. Zappa would need to restrict her work hours to 24 to 26 per week and no more than six hours per day during the next two months due to illness.

Ms. Zappa returned to work on May 15. She worked that day and on May 18, but then commenced another period of approved leave.

On May 19, 2020, Ms. Zappa had a follow-up appointment with her physician, who advised that Ms. Zappa would be unable to work for the period of May 19, 2020 through May 29, 2020 due to illness.

On May 28, 2020, a physician's assistant involved in Ms. Zappa's care completed a Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act). The provider indicated that the medical condition in question was uncontrolled diabetes with hyperglycemia and near syncopal episodes. The provider indicated that Ms. Zappa was unable to perform any of her job functions due to the condition. The provider indicated that the probable duration of the condition was until June 10, 2020. The provider sent the certification to the employer in a timely manner and the employer approved additional leave.

On June 10, 2020, Ms. Zappa's medical provider issued a medical excuse indicating Ms. Zappa would be screened for COVID-19 on June 15, 2020 and that she needed to self-isolate pending a medical procedure set for June 18, 2020. The medical procedure in question was a colonoscopy. The medical excuse indicated that Ms. Zappa could return to work on June 19, 2020, but would be restricted to working 24 to 28 hours per week and no more than six hours per day for one month. The medical provider indicated that Ms. Zappa could thereafter slowly increase her work hours.

Ms. Zappa returned to work on June 21, 2020. She worked 3.55 hours that day. She also worked for additional shifts that week within her six-hour shift duration restriction. For that week, work total hours worked were 24.38 in keeping with the medical work restrictions. Ms. Zappa's wages for the week that ended June 27, 2020 totaled \$280.37.

Ms. Zappa worked 1.68 hours on June 29, 2020. On July 1, 2020, Ms. Zappa reported for work with a conspicuous growth on her face. The employer was concerned that the growth might be

a Staphylococcus infection and sent Ms. Zappa home for the day. On that day, Ms. Zappa was examined by a physician, removed the growth from her face and advised her to remain off work for a week.

Ms. Zappa returned to work and to her regular duties on July 7, 2020 and continued in the employment at the time of the August 6, 2020 appeal hearing.

Throughout Ms. Zappa's time away from the employment, the employer continued to have work available for her.

Ms. Zappa established an original claim for unemployed insurance benefits that was effective April 4, 2020. Iowa Workforce Development set her weekly benefit amount at \$271.00. Ms. Zappa made weekly claims for the 13 weeks between April 5, 2020 and July 4, 2020. Iowa Workforce Development paid regular benefits for each of the weeks between April 5, 2020 and June 20, 2020. For each week for which IWD paid regular benefits, IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation. IWD did not pay benefits for the weeks that ended June 27 and July 4, 2020. Ms. Zappa discontinued her claim for benefits after the benefit week that ended July 4, 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) and (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.

(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 provides, in relevant part, as follows:

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.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

...

(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.

Ms. Zappa did not meet the usual able and available requirements during the period of April 5, 2020 through July 4, 2020. From April 6, 2020 through May 4, 2020, Ms. Zappa was off work due to illness, pursuant to the advice of a physician, and due in part to her increased risk of contracting and suffering complications in connection with COVID-19. Though unemployment insurance benefits are not intended to provide a form of sick pay, Iowa Workforce Development has somewhat relaxed the able and available requirements in certain COVID-19 related situations. 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 modify 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 has been advised to quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020. Though Ms. Zappa did not meet the usual able and available requirements during the period of April 5, 2020 through May 2, 2020, she did meet the COVID-19 modified able and available

requirements during that period and is eligible for benefits for those four weeks, provided she meets all other eligibility requirements. Effective May 5, 2020, Ms. Zappa's continued need to be off work was not due to a compromised immunity and was instead due to sundry medical issues that made her unable to work and unavailable for work. During this time, Ms. Zappa was on multiple leaves of absence, which the law deems periods of voluntary unemployment. Ms. Zappa did not meet the able available requirements for the benefit weeks between May 3, 2020 and June 20, 2020 and not eligible for benefits for that period. During the week that ended June 27, 2020, Ms. Zappa worked and earned wages that exceeded her weekly benefit amount. Ms. Zappa's somewhat reduced hours during that week were attributable to her ongoing medical issue and not attributable to the employer. Ms. Zappa cannot be deemed unemployed during the week that ended June 27, 2020 and is not eligible for benefits for that week. During the week that ended July 4, 2020, Ms. Zappa was once again on a leave of absence due to a non-work related medical issue. Ms. Zappa did not meet the able and available requirements for that week and is not eligible for benefits for that week that ended July 4, 2020.

Iowa Code section 96.7(2)(a)(2)(a) provides

[I]f 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.

Because the employer continued to have the same work available for Ms. Zappa during the period of April 5, 2020 through July 4, 2020 as the employer provided earlier in the employment, the employer's account will not be charged for benefits for the period of April 5, 2020 through July 4, 2020.

**DECISION:**

The June 26, 2020, reference 01, decision is modified as follows. The claimant did not meet the usual able and available requirements for the period of April 5, 2020 through July 4, 2020, but did meet the COVID-19 modified able and available requirements for the period of April 5, 2020 through the benefit week that ended May 2, 2020. The claimant is eligible for benefits for the period of April 5, 2020 through May 2, 2020, provided she is otherwise eligible. The claimant is not eligible for benefits for the period of May 3, 2020 through July 4, 2020. The employer's account will not be charged for benefits for the period of April 5, 2020 through July 4, 2020.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision for the regular and FPUC benefits disbursed to the claimant for the period of May 3, 2020 through July 4, 2020.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits for the period of May 3, 2020 through July 4 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. *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, 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

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August 24, 2020  
Decision Dated and Mailed

jet/mh