

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KERVIN Y GONZALEZ
Claimant

APPEAL NO. 20A-UI-10067-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Kervin Gonzalez filed a timely appeal from the August 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Gonzalez was on a leave of absence that he requested and the employer approved, was voluntarily unemployed, and was unavailable for work. After due notice was issued, a hearing was held on October 6, 2020. Claimant Kervin Gonzalez participated. Zachery Rodibaugh represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was able to work and available for work for the period of April 12, 2020 through May 23, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kervin Gonzalez was employed by Packers Sanitation Services, Inc. (PSSI) as a full-time Food Safety Sanitor. Mr. Gonzalez was assigned to West Liberty Foods. Mr. Gonzalez work hours were 3:00 p.m. to 11:00 p.m., Monday through Friday. Mr. Gonzalez also worked Saturdays as needed. Zachery Rodibaugh is the PSSI Site Manager for the West Liberty Foods location. On or about April 4, 2020, Mr. Gonzalez began a leave of absence that he requested and that the employer approved. Mr. Gonzalez began the leave of absence out of concern that he might become exposed to COVID-19 in the workplace and might take the virus home to his family. During the time in question, West Liberty Foods was screening people for symptoms of COVID-19 before allowing them to enter the workplace. Even before COVID-19 became a factor, Mr. Gonzalez wore a substantial amount of personal protective equipment to perform his job. This included a hard hat, safety glasses, safety goggles, a face shield to protect from chemical exposure, a rain coat and rain pants, arm protectors, cotton gloves with rubber outer gloves, hearing protection, steel-toed boots, and lock-out/tag-out equipment. With the arrival of COVID-19, the employer made face masks and plastic face shields available. Mr. Gonzalez did not contract COVID-19 and was not exposed to COVID-19. While Mr. Gonzalez was off work,

he quarantined at home with his family. The employer continued to have his regular work available.

Mr. Gonzalez established an original claim for benefits that was effective April 12, 2020. PSSI is the sole base period employer. Iowa Workforce Development set Mr. Gonzalez's weekly benefit amount at \$391.00. Mr. Gonzalez made weekly claims for the six consecutive weeks between April 12, 2020 and May 23, 2020.

Mr. Gonzalez returned to work on or about May 26, 2020, worked for PSSI two additional weeks, and then became an employee of West Liberty Foods at the same facility where he had performed work for PSSI.

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(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.

(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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

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).

The evidence in the record establishes that Mr. Gonzalez was not available for work within the meaning of the law during the period of April 12, 2020 through May 23, 2020. Mr. Gonzalez requested and the employer approved a leave of absence. During the leave of absence, the employer continued to have work available, but Mr. Gonzalez elected to remain off work and unavailable for work. Benefits are denied for the period of April 12, 2020 through May 23, 2020.

DECISION:

The August 12, 2020, reference 01, decision is affirmed. The claimant was not available for work within the meaning of the law during the period of April 12, 2020 through May 23, 2020 and is not eligible for benefits for that period.



James E. Timberland
Administrative Law Judge

October 8, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.**