

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVERA GARDNER
Claimant

WALGREEN CO
Employer

APPEAL NO. 20A-UI-05278-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Davera Gardner filed a timely appeal from the June 3, 2020, reference 01, decision that denied benefits for the period beginning April 5, 2020, based on the deputy's conclusion that Ms. Gardner requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on June 30, 2020. Ms. Gardner participated. Tara McDowell, Assistant Store Manager, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Davera Gardner is employed by Walgreen Company as a part-time customer service associate at the employer's Keokuk store. Ms. Gardner began the employment in April 2019. Ms. Gardner has generally worked hours ranging from 20 to 35 per week. At the time of the June 30, 2020 appeal hearing, Ms. Gardner had most recently performed work for the employer on March 16, 2020. Ms. Gardner is the mother of two minor children, ages 11 and 12, both of whom usually attend school during the academic year. Ms. Gardner also has one or more adult children and six grandchildren. Effective March 16, 2020, Keokuk schools closed to prevent community spread of COVID-19. Ms. Gardner uses a 67-year-old in-home daycare provider for her minor children as needed. Effective March 16, 2020, Ms. Gardner's childcare provider was no longer available to look after the children in light of concern about COVID-19.

On March 16, 2020, Ms. Gardner notified the employer that she would be temporarily unable to appear for work in light of her childcare issues. During that contact, Ms. Gardner mentioned that she would be babysitting her grandchildren. Ms. Gardner's plan was to care for her own children and her grandchildren. The employer's third-party leave provider subsequently approved Ms. Gardner for an unpaid leave of absence for the period of March 16, 2020 through

June 30, 2020, based Ms. Gardner's lack of childcare in the context of COVID-19 school closure. The employer continued to have work for Ms. Gardner while she was off work. The school year ended on May 29, 2020.

On June 29, 2020, Ms. Gardner contacted the employer to advise that she was ready to return to work. Ms. Gardner's childcare provider had notified Ms. Gardner that she would be again available to assist with Ms. Gardner's childcare needs as of July 1, 2020.

Ms. Gardner did not immediately establish a claim for unemployment insurance benefits in connection with her need to go off work. Only after an acquaintance suggested that Ms. Gardner should apply for unemployment insurance benefits did Ms. Gardner take steps to establish the original claim that was effective April 5, 2020. Iowa Workforce Development set Ms. Gardner's weekly benefit amount at \$226.00. Ms. Gardner made weekly claims for the 12 weeks between April 5, 2020 and June 27, 2020. IWD paid Ms. Gardner \$1,808.00 in regular benefits for eight weeks between April 5, 2020 and May 30, 2020. IWD also paid Ms. Gardner \$4,800.00 in Federal Pandemic Unemployment Compensation for the eight weeks between April 5, 2020 and May 30, 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(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(8) and (10) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

...

(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.

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 also include circumstances wherein the claimant's child's school has closed and the claimant lacks childcare. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Iowa Code section 96.7(2)(a)(2)(a) provides as follows:

[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.

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.

Under the usual availability analysis, Ms. Gardner's lack of childcare and requested for a leave of absence would cause her to not meet the availability requirement. However, Ms. Gardner's need to provide childcare for her children in the context of the school closure would not prevent Ms. Gardner from meeting the COVID-19 based temporarily amended availability requirement for the period of April 5, 2020 through the benefit week that ended May 30, 2020. Accordingly, Ms. Gardner is eligible for benefits for the period of April 5, 2020 through the benefit week that ended May 30, 2020, provided she meets all other eligibility requirements. The employer's account will not be charged for benefits in connection for this period. After the May 29, 2020, end of the school year, Ms. Gardner's childcare issue were no longer based on the school closure. Between Ms. Gardner's last day of work in March and the last day of school, Ms. Gardner had a reasonable opportunity to secure other childcare for her 11 and 12 year old if the usual provider was not available to assist. Ms. Gardner did not meet the availability

requirements for the period beginning May 31, 2020. Benefits are denied effective May 31, 2020.

DECISION:

The June 3, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. Based on the COVID-19 based school closure and associated lack of childcare, the claimant met the able and available requirements for the period of April 5, 2020 through the benefit week that ended May 30, 2020 and is eligible for benefits for that period, provided she is otherwise eligible. The employer's account will not be charged for benefits paid in connection with the COVID-19 based claim. The claimant did not meet the availability requirement effective May 31, 2020. Benefits are denied for the period beginning May 31, 2020 through the benefit week that ended June 27, 2020.



James E. Timberland
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

jet/mh