

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHERINE M LUETHJE
Claimant

MENARD INC
Employer

APPEAL NO. 20A-UI-08984-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Appellant (1/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23 - Availability Disqualifications

STATEMENT OF THE CASE:

Katherine Luethje filed a timely appeal from the July 15, 2020, reference 03, decision that denied benefits effective March 22 2020, based on the deputy's conclusion that she was on a leave of absence that she requested and that the employer approved, that she was voluntarily unemployed, and that she was not available for work. After due notice was issued, a hearing was held on September 14, 2020. Ms. Luethje participated. Shaphan Smith represented the employer and presented additional testimony through Ashley Eibeck. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX.

ISSUES:

Whether the claimant has been able to work and available for work since March 22, 2020.
Whether the claimant was on a voluntary leave of absence for the period beginning March 22, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Katherine Luethje established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set her weekly benefit amount for regular benefits at \$231.00. Ms. Luethje has made weekly claims for each consecutive week between March 22, 2020 and September 5, 2020. Ms. Luethje received \$3,696.00 in regular benefits for the 16 weeks between March 22, 2020 and July 11, 2020. Ms. Luethje also received \$9,000.00 in Federal Pandemic Unemployment Compensation (FPUC) for 15 weeks between March 29, 2020 and July 11, 2020.

At the time Ms. Luethje established her claim for benefits, and until August 12, 2020, Ms. Luethje was employed by Menard, Inc. as a part-time cashier at the employer's Marshalltown store. Ms. Luethje began the employment in March 2019. Ms. Luethje last worked for the employer on March 21, 2020. On March 21, 2020, a customer in Ms. Luethje's check-out line mentioned that her brother had tested positive for COVID-19. Pursuant to

Ms. Luethje's understanding, the customer had not herself tested positive, did not live with the brother, but worked for the same employer as the brother. The incident unnerved Ms. Luethje, who suffers from post-traumatic stress disorder, anxiety and depression. Ms. Luethje was thereafter absent from shifts on March 23 and March 25, due to high blood pressure and anxiety. Ms. Luethje consulted a doctor, who released her to return to work on March 26, 2020. Ms. Luethje did not return to work at that time.

On March 27, 2020, Ms. Luethje called the workplace and spoke to the Assistant Front End Manager regarding her desire to self-quarantine. Ms. Luethje did not have COVID-19 and had not been exposed to COVID-19. Rather, Ms. Luethje was worried about the possibility of contracting COVID-19 and taking it home to her family. Multiple members of Ms. Luethje's household have health issues that increase their risk in connection with COVID-19. At the time Ms. Luethje requested to remain off work, the employer was offering employees up to 30 days off for COVID-19 related leave. Ms. Luethje requested and was approved for a leave of absence through April 20, 2020. The basis for the leave of absence was Ms. Luethje's desire to self-quarantine in connection with the COVID-19 pandemic.

Ms. Luethje did not return to work in April 2020 at the end of her initial leave period. Instead, Ms. Luethje requested and the employer approved an extension of the leave through June 14 2020, with a return-to-work date of June 15, 2020. Ms. Luethje and her doctor completed Family and Medical Leave Act paperwork that referenced anxiety, depression and a need for Ms. Luethje to care for her significant other as the bases for extending the leave. Ms. Luethje's boyfriend had recently undergone surgery on his spine.

Ms. Luethje did not return to work in June 2020 at the end of the extended leave period. Rather, Ms. Luethje requested a further extension of the leave period through August 1, 2020, with a return to work date of August 2, 2020. Ms. Luethje cited depression and anxiety as the basis for extending the leave. The employer approved the leave request.

Prior to going off work in March 2020, Ms. Luethje had worked 26 to 40 hours per week. The employer had continued to have the same work available for Ms. Luethje since she went off work in March 2020.

Ms. Luethje returned to work on August 2, 2020 and completed her shift that day. In connection with her return to the employment, Ms. Luethje requested to reduce her work hours to four hours per shift and three shifts per week. Ms. Luethje provided medical documentation in support of her request to reduce her work availability. The employer accommodated Ms. Luethje's request for reduced work hours.

After Ms. Luethje worked her shift on August 2, 2020, she did not return to the employment. Ms. Luethje called in sick on August 6, 2020. On that same day, Ms. Luethje sent an email message to the employer in which she stated that her son and his family had returned to the United States, that her son had purchased tickets for Ms. Luethje to fly to Washington to see him and his family on August 10, 2020, with a return trip on August 24, 2020. Ms. Luethje stated that she needed to make the trip for personal reasons. Ms. Luethje stated that she had been ill, was thinking of getting a COVID-19 test, wanted to return to work after her trip, and did not want to quit. Ms. Luethje was at that point already scheduled to work additional shifts, including shifts on August 8, 9, 12 and 13. On August 7, the employer provided an email response to Ms. Luethje's email of August 6. The employer advised that since Ms. Luethje was already scheduled for shifts, she would have to find coverage for the shifts. The employer stated that it needed a medical note for the illness-related absence or attendance points would be assigned to the absence. The employer requested an update if and when Ms. Luethje got

tested for COVID-19. Ms. Luethje called in absences on August 8 and 9, 2020. Ms. Luethje tested negative for COVID-19. On August 10, 2020, Ms. Luethje was in Marshalltown at the time of the derecho, which triggered her PTSD and prompted her to delay her flight to Washington. On August 12, 2020, Ms. Luethje sent an email message to the employer indicating that her COVID-19 test has been negative, that she had tried to contact her doctor, that she had experienced a mental breakdown during the storm, and that she was not going to return to the employment until August 25, 2020, after her trip to see her son. On August 12, 2020, the employer documented that the employment had ended. Ms. Luethje continued to make weekly claims through the benefit week that ended September 5, 2020. Ms. Luethje's mental state continued to make her unavailable for work through that date.

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 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.

...

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

...

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

...

(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Ms. Luethje has not been available for work since she established the claim for benefits that was effective March 22, 2020. From March 22, 2020 through August 1, 2020, Ms. Luethje was on a leave of absence that she requested and that the employer approved. During most of that leave of absence, Ms. Luethje was under care of a doctor who deemed her unable to work and had not released her to return to work. Ms. Luethje's concern about COVID-19 was a secondary basis for the leave. The primary basis for the leave of absence was Ms. Luethje's unstable mental state. Though Ms. Luethje returned to work on August 2, 2020, she and her doctor significantly restricted her availability. Whereas Ms. Luethje had previously worked 26 to 40 hours a week, Ms. Luethje and her doctor restricted her availability to 12 hours a week effective August 2, 2020. The employer had continued all along to have the same work available for Ms. Luethje and accommodated her reduced availability. However, Ms. Luethje was thereafter absent due to illness and then notified the employer that she was going on an out-of-state vacation for two weeks. There is no basis to conclude that Ms. Luethje was available for work upon her return from Washington or through the benefit week that ended September 5, 2020. Ms. Luethje has not met the Iowa Code section 96.4(3) availability requirement from March 22, 2020 through September 5, 2020, even under the United States Department of Labor's guidance to flexibly interpret this requirement during the COVID-19 pandemic. See Unemployment Insurance Program Letter No. 10-20. Regular state benefits are denied for the period beginning March 22, 2020 through September 5, 2020.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The July 15, 2020, reference 03 decision, is affirmed. The claimant has not met the able and available requirements since establishing the March 22, 2020 original claim for benefits. The claimant is not eligible for regular, state-funded unemployment insurance benefits for the period beginning March 22, 2020 through the benefit week that ended September 5, 2020.

This matter is remanded to the Benefits Bureau for adjudication of the employment separation that occurred on August 12, 2020.



James E. Timberland
Administrative Law Judge

September 17, 2020
Decision Dated and Mailed

jet/sam

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 will be required to repay the benefits you have received.**