

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CANDACE R BENSON**

Claimant

**APPEAL NO. 20A-UI-10405-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST JANITORIAL SERVICE INC**

Employer

**OC: 04/26/20**

**Claimant: Appellant (2R)**

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.19(38) – Temporary and Partial Unemployment

**STATEMENT OF THE CASE:**

Candace Benson filed a timely appeal from the August 21, 2020, reference 01, decision denied benefits for the period beginning April 26, 2020, based on the deputy's conclusion that Ms. Benson 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 October 14, 2020. Ms. Benson participated. Erin Decker represented the employer and presented additional testimony through Stephanie Logan. Exhibit A through D were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

**ISSUES:**

Whether the claimant was able to work and available for work for the period beginning April 26, 2020.

Whether the claimant was partially and/or temporarily unemployed for the period beginning April 26, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Candace Benson began employment with Midwest Janitorial Service, Inc. in 2018 and last performed work for the employer on April 24, 2020. Ms. Benson worked as a part-time custodian assigned to evening cleaning duties at Mercy medical facility in Coralville. Kim Sayers District Operations Manager, was Ms. Benson's supervisor. Ms. Benson's daughter also worked for the employer. Ms. Benson and her daughter do not share a household, but shared a vehicle and worked together at the Mercy facility. On Monday, April 27, 2020, Ms. Benson notified the employer that she would be absent due to a low-grade fever and a pinched sciatic nerve. In her text message to Ms. Sayers, Ms. Benson wrote as follows:

Just wanted to give you an early heads up. I caught whatever taarna had and I am running a small fever of 99.7 and to top it off I have a pinched sciatic nerve and can barely walk. Talked to the doc, on antibiotics, muscle relaxers and pain meds.

Ms. Sayers responded, "You will have to be fever free for 72 hours before you can come back." Ms. Sayers asked whether Ms. Benson's daughter was returning to work that day and Ms. Benson replied she was. Ms. Benson's daughter had recently been out sick with strep throat. During the April 27 text message exchange, Ms. Benson added, "I always run a bit warm and 99.7 is low grade. I was hoping to if the muscle relaxers get this nerve un pinched that I could be back on Wednesday night." Ms. Sayers replied, "you will have to fill out a form they will send you. HR will contact you after you call." Ms. Benson responded that she had called at noon and the human resources representative had not said anything about a form. Ms. Sayers said the human resources staff would send Ms. Benson the form.

On April 28, 2020, Ms. Benson called Ms. Sayers to say that she felt better and wanted to return to work on April 29, 2020. Ms. Sayers told Ms. Benson that Ms. Benson would need to contact human resources to get approval to return to work. As of April 28, 2020, Ms. Benson's low-grade fever was gone. Ms. Benson takes ibuprofen daily due to a history of migraine headaches. Ms. Benson follows up with her doctor every three to six months due to the history of migraines. Ms. Benson made contact with the human resources staff as directed, but the employer would not approve Ms. Benson to return to work unless and until she discontinued taking ibuprofen for three days and was able to demonstrate that she remained fever-free without the ibuprofen. Ms. Benson refused to discontinue taking ibuprofen and the human resources personnel refused to allow Ms. Benson to return to the employment.

In response to the employer's refusal to allow her to return to work, Ms. Benson established an original claim for unemployment insurance benefits that Iowa Workforce Development deemed effective April 26, 2020. Iowa Workforce Development set Ms. Benson's weekly benefit amount for regular benefits at \$148.00. Midwest Janitorial Service, Inc. is the sole base period employer. Once Ms. Benson established her claim, she commenced making weekly claims and had continued her consecutive weekly claims as of the October 14, 2020 appeal hearing.

After the employer's initial refusal to allow Ms. Benson to return to the employment, the same conversation between the human resources personnel and Ms. Benson repeated during multiple contacts up to May 11, 2020. The employer was concerned about the risk of COVID-19, even though Ms. Benson had been to the doctor on April 27, had received a diagnosis that was not COVID-19, and was on antibiotics to treat the non-COVID-19 illness. The employer did not think to facilitate COVID-19 screening and does not have a policy requiring such screening. Ms. Benson did not seek such screening.

As of May 18, 2020, the employer still had not allowed Ms. Benson to return to work and Ms. Benson had still not acquiesced in discontinuing her daily ibuprofen regimen. On May 18, 2020, Ms. Sayers sent a text message to Ms. Benson requesting that Ms. Benson return her keys the following day. Ms. Benson replied, "Hoping to be back to work tomorrow." Ms. Sayers replied, you have to talk to hr so I still need the keys. We continue to have to let ppl in and out." Ms. Benson complied with the employer's directive to return her keys. The employer did not allow Ms. Benson to return to the employment.

From April 29, 2020 onward, Ms. Benson was physically and mentally well enough to work and ready to return to her work duties at Midwest Janitorial Service.

At the time Ms. Benson established her unemployment insurance claim, Iowa Workforce Development had suspended the work search requirement in response to the economic impact of the COVID-19 pandemic. IWD re-imposed the work search requirement effective September 6, 2020. Between September 6, 2020 and the October 14, 2020 appeal hearing

date, Ms. Benson sought new employment, submitted two application per week, and kept an appropriate log documenting her search for new employment.

### **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(1) and (41) 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.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. 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.

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 weight of the evidence in the record establishes that Ms. Benson was able to work, available to work, but temporarily laid off effective April 29, 2020. While the employer had a reasonable basis for wanting to keep its employees from introducing COVID-19 into its client's facility, it was unreasonable for the employer to bar Ms. Benson from returning to work unless she discontinued her long-standing daily ibuprofen regimen. Ms. Benson had a reasonable basis for refusing to discontinue the medication. The employer had other options, such as facilitating COVID-19 screening, but elected to bar Ms. Benson from returning, rather than explore other solutions. Ms. Benson's refusal to discontinue her daily ibuprofen regimen did not prevent her from being able to work or available for work. Ms. Benson continued to be able and available, but temporarily unemployed at the time the employer requested that she return her keys and thereby signaled an end to the employment. Ms. Benson continued to meet the able and available requirements during the period when IWD had suspended the work search requirement. Ms. Benson continued to demonstrate compliance with those requirement from the September 6, 2020, re-imposition of the work search requirement through the time of the October 14, 2020 appeal hearing. Ms. Benson is eligible for benefits for the period beginning April 26, 2020, provided she met all other eligibility requirements. Ms. Benson continued be eligible for benefits as of the October 14, 2020 appeal hearing, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for entry of an initial decision regarding the May 18, 2020 separation.

**DECISION:**

The August 21, 2020, reference 01, decision is reversed. The claimant was able to work, available for work and temporarily laid off during the benefit week that ended May 2, 2020 through the benefit week that ended May 16, 2020. Thereafter, the claimant continued to be able to work through the October 14, 2020 appeal hearing date. The claimant is eligible for benefits for the period beginning April 26, 2020, provided she met all other eligibility requirements. The claimant continued be eligible for benefits as of the October 14, 2020 appeal hearing date, provided she meets all other eligibility requirements.

This matter is **remanded** to the Benefits Bureau for entry of an initial decision regarding the May 18, 2020 separation.



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James E. Timberland  
Administrative Law Judge

December 3, 2020  
Decision Dated and Mailed

jet/mh