

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH W BADDER
Claimant

MENARD INC
Employer

APPEAL NO. 20A-UI-08448-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (2/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.7(2)(a)(2)(a) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2020, reference 02, decision that allowed benefits to the claimant for the period beginning March 29, 2020, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work and available for work. The administrative law judge notes that neither party participated in a fact-finding interview and the deputy's decision was entered without input from either party. After due notice was issued, a hearing was held on August 28, 2020. Claimant Joseph Badder did not provide a telephone number for the hearing and not participate. Adam Bohlen represented the employer. The hearing in this matter was consolidated with a *duplicate* appeal in Appeal Number 20A-UI-08447-JTT. Exhibits 1 and 2 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 has been able to work and available for work since March 29, 2020.
Whether the employer's account may be charged for benefits paid to the claimant for the period of March 29, 2020 through August 22, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Badder is employed by Menard, Inc. as the full-time Cabinet and Appliance Department Manager at the employer's Grimes location. Adam Bohlen, General Manager, is Mr. Badder's immediate supervisor. On March 16, 2020, Mr. Badder spoke to Mr. Bohlen to request a leave of absence paperwork. Mr. Badder expressed general concerns about the COVID-19 virus. Mr. Badder told Mr. Bohlen that he and his wife had just adopted a child. The employer understands the child to be three years old, to not yet be in school, and to be cared for at home by Mr. Badder's spouse. Mr. Badder asserted to Mr. Bohlen that his wife had an autoimmune issue. Mr. Badder provided the employer with paperwork regarding the adoption. Mr. Badder did not provide medical documentation to support a need to be off work in connection with the novel coronavirus. On March 17, 2020, Mr. Badder began an approved leave of absence. On

April 13, 2020, Mr. Badder signed the written leave of absence request form. The form indicated the leave for the leave to be "Adoption of Child" and indicated that Mr. Badder would return work on May 24, 2020. Mr. Badder did not return to work on May 24, 2020. On May 18, 2020, Mr. Badder updated leave request to indicate that he would returned on June 8, 2020. The employer approved the leave extension. The employer continued to have Mr. Badder's regular full-time work available for Mr. Badder throughout his absence from the employment. Mr. Badder returned to his full-time employment on June 8, 2020 and continued in the full-time employment at the time of the August 28, 2020 appeal hearing.

Mr. Badder established an original claim for unemployment insurance benefits that was effective March 29, 2020. Iowa Workforce Development set his weekly benefit amount at \$518.00. Mr. Badder made weekly claims for 21 consecutive weeks between March 29, 2020 and August 22, 2020. For each week, Mr. Badder reported that he was unemployed, that he was able to work and available for work, that he had not refused any work. For the first two weeks of the claim, Mr. Badder reported vacation pay. For the week that ended April 4, 2020, Mr. Badder reported \$500.00 in vacation pay. For the week that ended April 11, 2020, Mr. Badder reported \$300.00 in vacation pay. Mr. Badder reported no other wages for the period of March 29, 2020 through August 22, 2020, even though he had returned to full-time employment on June 8, 2020. Mr. Badder received regular benefits for each of the 21 weeks between March 29, 2020 and August 22, 2020. Mr. Badder also received \$600.00 in Federal Pandemic Unemployment Compensation for the 18 consecutive weeks between March 29, 2020 and July 25, 2020. Menard, Inc. is the sole base period employer in connection with the claim.

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(10) and (23) 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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 exceptions to the able and available requirements set forth at Iowa Code section 96.4(3). Such situations include instances wherein (1) the claimant is ill with COVID-19, (2) the claimant is exposed to COVID-19 and quarantined, (3) the claimant is caring for a family member ill with COVID-19, (4) the claimant loses childcare in response to a COVID-19 school closure, (5) a school employee loses work due a school closure, (6) the claimant is immune-compromises and is advised by a medical professional to quarantine, (7) the employer shuts down temporarily or permanently or reduces work hours, and (8) the claimant is a healthcare work or first responder under quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020. Mr. Badder's leave of absence circumstances did not fall within the COVID-19 related exceptions to able and available requirements.

If a claimant whom 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 established that Mr. Badder has not been available for work within the meaning of the law since he established the original clam for benefits that was effective March 29, 2020. Mr. Badder was on an approved non-COVID-19 related leave of absence during the period of March 17, 2020 through Sunday June 7, 2020. Mr. Badder requested the leave and the employer approved the request. During the leave of absence, Mr. Badder was voluntarily unemployed and not available for work within the meaning of the law. From June 8, 2020 up to the present, Mr. Badder has been working in his regular full-time employment, cannot be deemed unemployed, and does not meet the "availability" requirement to be eligible for benefits. Benefits are denied effective March 29, 2020 and the availability disqualification continues as of

the August 28, 2020 appeal hearing date. The employer's account will not be charged for benefits paid to the claimant for the period of March 29, 2020 through August 22, 2020.

DECISION:

The July 2, 2020, reference 02, decision is reversed. The claimant has been job-attached but not available for work within the meaning of the law since he established the original claim for benefits that was effective March 29, 2020. Benefits are denied effective March 29, 2020 and the availability disqualification continues as of the August 28, 2020 appeal hearing date. The employer's account will not be charged for benefits paid to the claimant for the period of March 29, 2020 through August 22, 2020.

This matter is remanded to the Investigations & Recovery Unit of the Integrity Bureau for determination of whether the claimant engaged in fraud in connection with his claim for benefits, especially for the period of June 8, 2020 through August 22, 2020, and for entry of overpayment decisions regarding the regular benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits disbursed to the claimant.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. 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, 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>.



James E. Timberland
Administrative Law Judge

September 2, 2020
Decision Dated and Mailed

jet/sam