

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARIA S GONZALEZ
Claimant

JELD-WEN INC
Employer

APPEAL NO. 20A-UI-03730-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) & (c) – Partial and Temporary Unemployment

STATEMENT OF THE CASE:

Maria Gonzalez filed a timely appeal from the April 29, 2020, reference 01, decision that denied benefits effective March 15, 2020, based on the deputy's conclusion that Ms. Gonzalez was unable to work due to illness. After due notice was issued, a hearing was held on June 5, 2020. Ms. Gonzalez participated personally and was represented by Jeny Herrera. Ms. Gonzalez and Ms. Herrera each provided testimony. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A through E were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX. Spanish-English interpreter Isai Chanez of CTS Language Link assisted with the appeal hearing.

ISSUES:

Whether the claimant was able to work and available for work within the meaning of the law during the eight weeks between March 15, 2020 and May 9, 2020.

Whether the claimant was temporarily and/or partially unemployed during any of the eight weeks between March 15, 2020 and May 9, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Gonzalez established an original claim for benefits that was effective March 15, 2020. Iowa Workforce Development set Ms. Gonzalez's week benefit amount at \$480.00. Ms. Gonzalez is a Spanish-speaking person and has relied on the assistance of her daughter, Jeny Herrera, in matters related to the unemployment insurance claim. Ms. Gonzalez reported gross wages and received regular state benefits as follows:

<u>Benefit Week End Date</u>	<u>Wages Reported</u>	<u>State Benefits Paid</u>
03/21/20	0.00	480.00
03/28/20	266.00	334.00
04/04/20	0.00	480.00
04/11/20	0.00	480.00
04/18/20	761.00	0.00
04/25/20	385.00	215.00
05/02/20	0.00	0.00
05/09/20	0.00	0.00

Ms. Gonzalez received \$600.00 in Federal Pandemic Unemployment Compensation (FPUC) for the week that ended April 11, 2020 and additional \$600.00 in FPUC for the week that ended April 25, 2020.

Ms. Gonzalez has at all relevant times been employed by Jeld-Wen, Inc. as a full-time production worker. Ms. Gonzalez's work hours are 3:30 p.m. to midnight, Monday through Friday. Ms. Gonzalez works a similar shift on Saturdays as needed. The production work cannot be performed remotely or through telework.

On March 11, 2020, Ms. Gonzalez reported for work, but the employer denied Ms. Gonzalez entry to the workplace because she presented with a cough. The employer referenced the novel coronavirus as the basis for denying entry. The employer directed Ms. Gonzalez to go to her doctor for an assessment and indicated that Ms. Gonzalez could not return to work until her symptoms were gone or until a doctor released her to return to work. On March 12, 2020, Ms. Gonzalez was evaluated by a doctor. The doctor diagnosed Ms. Gonzalez with pneumonia and told Ms. Gonzalez she could not return work at that time. Despite the doctor's medical advice to remain off work, Ms. Gonzalez attempted to return to work on March 12, 2020. The employer denied entry to the workplace, based on Ms. Gonzalez's cough and the pneumonia diagnosis.

Ms. Gonzalez remained off work pending a follow-up medical appointment with her doctor on March 23, 2020. On March 23, 2020, the doctor told Ms. Gonzalez that she needed to remain off work at that time, but could return to work on March 27, 2020.

On Friday, March 27, 2020, Ms. Gonzalez reported for work despite still being ill. During that shift, Ms. Gonzalez became aware that others in her work area had been diagnosed with COVID-19. Ms. Gonzalez returned to her doctor for a stronger medication to address her persistent cough. The doctor provided a stronger cough medicine and took Ms. Gonzalez off work until April 9, 2020. The doctor subsequently extended Ms. Gonzalez's time off work until April 13, 2020. Before April 13, Ms. Gonzalez was tested for the novel coronavirus and tested negative. Ms. Gonzalez's doctor advised Ms. Gonzalez that she likely had been ill with COVID-19, but that it was likely too late in her illness to test positive for the virus. Testing Ms. Gonzalez for the novel coronavirus had been delayed due to the limited availability of coronavirus testing.

Ms. Gonzalez reported for on April 13, 2020 and continued to perform her work duties into the week of April 19-25, 2020. During that week, the employer announced that it was closing its production plant for two weeks due to COVID-19. The employer did not have any work for Ms. Gonzalez during the two-week period of April 26, 2020 through May 9, 2020. The employer restarted operations on May 12, 2020. Ms. Gonzalez returned to the full-time employment and discontinued her claim for unemployment insurance benefits.

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(1)(a) and (2) provide 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(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. ...

Iowa Admin. Code r. 871-24.23(1) 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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Pursuant to the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, Public Law 116-136, Iowa Workforce Development published a set of scenarios that carved out COVID-19 temporary exemptions to the able and available requirements of Iowa Code section 96.4(3). See COVID-19 SCENARIOS & BENEFITS CHART, <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020. This included instances where a claimant was ill with COVID-19, where a claimant was immune-compromised and had been advised by a medical professional to quarantine, and instances wherein an employer temporarily shuts down. The weight of the evidence in the record indicates that Ms. Gonzalez's persistent respiratory illness most likely was COVID-19. The employer obviously suspected as much, as did Ms. Gonzalez's doctor. Given the limited availability of COVID-19 testing during the time in question, Ms. Gonzalez cannot be faulted for the absence of a confirmatory test early enough in the illness to produce a more reliable test result. Nor, according to her doctor, would the negative test later in the disease process prove that Ms. Gonzalez did not have COVID-19. From the time Ms. Gonzalez established the original claim for benefits that was effective March 15, 2020 until she returned to work on Friday, March 27, 2020 Ms. Gonzalez was off work pursuant her doctor's order. Under the COVID-19 exemptions to the able and available requirements, Ms. Gonzalez met the able and available requirements during the two-week period of March 15, 2020 through March 28, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements. Ms. Gonzalez was then off work again pursuant to her doctor's directive until she returned to work on Monday, April 13, 2020. Under the COVID-19 exemptions to the able and available requirements, Ms. Gonzalez met the able and available requirements during the two-week period of March 29, 2020 through April 11, 2020 and is eligible for benefits for that period, provided she meets all other eligibility requirements.

During the week of April 12-18, 2020, Ms. Gonzalez worked full-time hours. Because Ms. Gonzalez was working full-time that week, she cannot be deemed unemployed that week and is not eligible for benefits for that week. See Iowa Administrative Code rule 871-24.23(23).

An individual shall be deemed *partially unemployed* in any week in which, 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. Iowa Code Section 96.19(38)(b).

The evidence indicates that Ms. Gonzalez was able to work, was available for work, but was partially unemployed during the week of April 19-25, 2020. During that week, the employer did not have full-time work available for Ms. Gonzalez, due to the employer's decision to temporarily shut down operations due to COVID-19 concerns. During that week, Ms. Gonzalez's weekly wages totaled \$385.00, significantly less than her weekly benefit amount. Ms. Gonzalez is eligible for benefits for the week that ended April 25, 2020, provided she is otherwise eligible.


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. Iowa Code Section 96.19(38)(c).

During the two-week period of April 26, 2020 through May 9, 2020, Ms. Gonzalez was able to work, available for work, but temporarily laid off due to the employer's decision to temporarily cease operations due to COVID-19 concerns. Ms. Gonzalez is eligible for benefits for the two-week period of April 26, 2020 through May 9, 2020, provided she is otherwise eligible.

In the context of the Covid-19 pandemic and Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Iowa Workforce Development has published an announcement that employer's accounts will not be charged for claims directly or indirectly related to the Covid-19 pandemic. See Information for Employers, <https://www.iowaworkforcedevelopment.gov/COVID-19#ife>. Accordingly, the employer's account not be charged for the benefits paid to Ms. Gonzalez for the period of March 15, 2020 through May 9, 2020.

DECISION:

The April 29, 2020, reference 01, is modified in favor of the claimant/appellant as follows. Under the COVID-19 related temporary exemptions to the able and available requirements, the claimant satisfied the able and available requirements during the period March 15, 2020 through April 11, 2020 and during the period of April 19, 2020 through May 9, 2020. In addition, the claimant was partially unemployed during the week that ended April 25, 2020 and temporarily laid off during the two-week period of April 26, 2020 through May 9, 2020. The claimant is eligible for benefits for the four weeks between March 15, 2020 and April 11, 2020 and for the three weeks between April 19, 2020 and May 9, 2020, provided she meets all other eligibility requirements. The claimant was employed full-time during the week that ended April 18, 2020 and is not eligible for benefits for that week. The employer's account shall not be charged for the benefits paid to the claimant for the period of March 15, 2020 through May 9, 2020.



James E. Timberland
Administrative Law Judge

June 25, 2020
Decision Dated and Mailed

jet/scn