

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CANDICE R LEMON
Claimant

KWIK TRIP INC
Employer

APPEAL NO. 20A-UI-08513-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Candice Lemon filed a timely appeal from the July 14, 2020, reference 01, decision that denied benefits effective May 17, 2020, based on the deputy's conclusion that Ms. Lemon was on a leave of absence that she requested and that the employer approved, that she was voluntarily unemployed, and that she was unavailable for work. After due notice was issued, a hearing was held on August 31, 2020. Ms. Lemon participated. Heather Breitbach represented the employer. 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 during the period of May 17, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Candice Lemon is employed by Kwik Trip, Inc. as a full-time kitchen worker at the employer's Dumont location. Ms. Lemon usually worked 38 to 40 hours per. Her usual work scheduled of 4:00 a.m. to noon, but she also worked 8:00 a.m. to 4:00 p.m. and 10:00 a.m. to 6:00 p.m. as needed. Ms. Lemon's hourly wage is \$12.25. Store Leader Heather Breitbach is Ms. Lemon's supervisor. During the week of May 17-23, 2020, Ms. Lemon was off work due to a non-work related torn Achilles' tendon. During that week, Ms. Lemon's adult son stayed with her. On Thursday, May 21 or Friday, May 22, Ms. Lemon's son tested positive for COVID-19 and Ms. Lemon thereby learned that she had been exposed to COVID-19. On Friday, May 22, 2020, Ms. Lemon contacted Kwik Trip human resources and learned that the employer wanted her to self-quarantine for two weeks. Ms. Lemon promptly contacted Ms. Breitbach to share that information. Ms. Lemon was expected to return to work on or about June 5, 2020. Ms. Lemon did not experience any symptoms of COVID-19. Her son had also shown no symptoms.

While Ms. Lemon was in self-quarantine due to exposure to COVID-19, her husband began displaying respiratory issues. Ms. Lemon's husband is a cigarette smoker and suffers from

asthma. On June 3 or 4, 2020, Ms. Lemon's husband was tested for COVID-19, but the result was inconclusive. Ms. Lemon updated the employer and commenced a second approved two-week period of self-quarantine. On June 8, 2020, Ms. Lemon's husband was again tested for COVID-19, but the result was inconclusive. Ms. Lemon's husband's health care provider referred Ms. Lemon's husband for a pulmonary consult that took place on or about June 24, 2020. Ms. Lemon had transported her husband to his medical appointments and continued to do so. On or about June 25, 2020, Ms. Lemon's husband was diagnosed with pleurisy, inflammation of the chest wall. The condition was determined not to be based on COVID-19 related. Ms. Lemon contacted Kwik Trip human resources and requested to extend her time off though the week that ended July 18, 2020. Ms. Breitbach approved the request. Ms. Lemon returned to her regular full-time employment on July 19, 2020. The employer had continued to have full-time work available for Ms. Lemon from the time she went off work, except during the periods when she was a required two-week self-quarantine.

Ms. Lemon established a claim for benefits that was effective May 17, 2020. Iowa Workforce Development set her weekly benefit amount at \$222.00. Kwik Trip is a base period employer in connection with the claim. Ms. Lemon made weekly claims for the nine consecutive weeks between May 17, 2020 and July 18, 2020. For the week that ended May 23, 2020, Ms. Lemon worked eight hours, for which she was paid \$98.00. During that same week, Ms. Lemon used 32 hours of accrued vacation pay benefit for which she was paid \$392.00. During the week that ended May 30, 2020, Ms. Lemon used \$159.00's worth of accrued vacation benefits. During the week that ended July 11, 2020, Ms. Lemon used \$38.00's worth of accrued vacation benefits. Ms. Lemon discontinued her claim for benefits following benefit week that ended July 18, 2020 in connection with her return to work.

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 (35) 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.

...

(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.

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 modifications to the able and available requirements set forth at Iowa Code section 96.4(3). These scenarios included circumstances wherein the claimant is exposed to COVID-19 and must self-quarantine. The scenarios also include circumstances wherein a claimant is caring for a family member who has been diagnosed with COVID-19. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

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).

In response to the economic impact of the COVID-19 pandemic, 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. The employer's account will not be charged for benefits paid to the claimant for the period of May 17, 2020 through July 18, 2020.

Ms. Lemon was not able to work and not available for work during the week that ended May 23, 2020 and is not eligible for benefits for that week. The basis for Ms. Lemon being off work the week of May 17-23, 2020 was her torn Achilles' tendon. Ms. Lemon was under the care of a health professional and was not released to work during that week. In addition, Ms. Lemon's combined regular wages and vacation pay exceeded her weekly benefit amount plus \$15.00.

Ms. Lemon met the COVID-19 modified able and available requirements during the weeks that ended May 30 and June 6, 2020 and is eligible for benefits for those two weeks, provided she meets all other eligibility requirements. Ms. Lemon was absent those weeks due to the need to self-quarantine in connection with a COVID-19 exposure. The employer required that Ms. Lemon be off work during that period.

Ms. Lemon met the COVID-19 modified able and available requirements during the weeks that ended June 13, June 20 and June 27, 2020 and is eligible for benefits for those three weeks, provided she meets all other eligibility requirements. During those weeks, Ms. Lemon was off work for a second approved two-week period of self-quarantine in light of additional exposure to COVID-19 and due to her need to care for her husband during the period when it was still unclear whether his illness was related to COVID-19.

Ms. Lemon was not available for work within the meaning of the law during the weeks that ended July 4, July 11, and July 18, 2020 and is not eligible for benefits for those weeks. On or about June 25, 2020, Ms. Lemon received clarification that her husband's respiratory condition was not COVID-19 based. Ms. Lemon elected to remain off work through the week that ended July 18, 2020 to care for her husband in connection with the non-COVID-19 illness.

DECISION:

The July 14, 2020, reference 01, decision is modified as follows. The claimant was not able to work and not available for work during the week that ended May 23, 2020 and is not eligible for benefits for that week. The claimant met the COVID-19 modified able and available requirements during the weeks between May 24, 2020 and June 27, 2020 and is eligible for benefits for those four weeks, provided she meets all other eligibility requirements. The claimant was not available for work within the meaning of the law during the weeks that ended July 4, July 11, and July 18, 2020 and is not eligible for benefits for those weeks. The employer's account will not be charged for benefits paid to the claimant for the period of May 17 2020 through July 18, 2020.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and Federal Pandemic Unemployment Compensation (FPUC) benefits the claimant received for the week that ended July 4, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits for some of the weeks of your claim. 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 1, 2020
Decision Dated and Mailed

jet/mh