

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MAX V PAREDES

Claimant

THOMAS L CARDELLA & ASSOCIATES INC

Employer

APPEAL NO. 20A-UI-04486-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20

Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.3(7) – Recovery of Overpaid Benefits

Public Law 116-136, Section 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Max Paredes filed a timely appeal from the May 18, 2020, reference 01, decision that denied benefits effective March 22, 2020, based on the deputy's conclusion that Mr. Paredes requested and was granted a leave of absence, was voluntarily unemployed, and did not meet the availability requirement. After due notice was issued, a hearing was held on June 9, 2020. Mr. Paredes participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A, B and C were received into evidence at the time of the hearing. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, and KPYX. The administrative law judge left the hearing record open until June 12, 2020 for the limited purpose of allowing Mr. Paredes additional opportunity to submit medical documentation concerning his own health and the health of his housemates. Mr. Paredes submitted materials that were received into the record as Exhibit D through J.

ISSUES:

Whether the claimant has been able to work and available for work since March 22, 2020.

Whether the claimant has been on a leave of absence since March 22, 2020.

Whether the claimant was overpaid regular benefits.

Whether the claimant was overpaid Federal Unemployment Pandemic Compensation.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Max Paredes established an original claim for benefits that was effective March 22, 2020. Iowa Workforce Development set Mr. Paredes' weekly benefit amount at \$209.00. Mr. Paredes has continued to make consecutive weekly claims since he filed his original claim for benefits. At the time of the June 9, 2020 appeal hearing, Mr. Paredes had filed 10 weekly claims for the period of March 22, 2020 through May 30, 2020. For each week, Mr. Paredes reported that he was not working, that he was able to work and available for work, and that he had no wages, vacation pay or holiday pay. IWD paid \$209.00 in regular benefits to Mr. Paredes for each of the seven weeks between March 22, 2020 and May 9, 2020. The regular benefits for that period totaled \$1,463.00. IWD also paid \$600.00 in Federal Pandemic Unemployment

Compensation (FPUC) for each of the six weeks between March 29, 2020 and May 9, 2020. The FPUC benefits totaled \$3,600.00.

Mr. Paredes was most recently employed by Thomas L. Cardella & Associates, Inc. (TLC). Mr. Paredes began the employment in July 2019. Mr. Paredes indicates that he is a current employee of TLC. Mr. Paredes last performed work for TLC on March 16, 2020. At TLC, Mr. Paredes provided inbound customer support for Anderson Windows. The work included telephone work and computer work. Mr. Paredes would usually work 32 hours per week, which consisted of eight-hour shifts on Monday, Tuesday, Thursday and Friday. Mr. Paredes describes the employment as full-time, though the employment was part-time. The work environment is a call center. Mr. Paredes worked in close proximity to coworkers performing similar duties.

Mr. Paredes has not returned to work since March 16, 2020. On March 17, 2020, Mr. Paredes awoke with conjunctivitis, otherwise known as pink eye. Mr. Paredes notified the employer of his need to be absent. Mr. Paredes was evaluated at a medical clinic and was diagnosed with pink eye. The provider advised Mr. Paredes to stay off work for 24 hours, to keep his eye clean, and to use an antibiotic if needed. The provider released Mr. Paredes to return to work once the pink eye passed. Mr. Paredes did not return to work once the pink eye passed.

Since March 19, 2020, Mr. Paredes has continued to provide daily notice to the employer of his need to be absent. On or about March 19, 2020, Mr. Paredes' friend told Mr. Paredes that she was experiencing symptoms similar to COVID-19 and that she needed to seek medical evaluation. Mr. Paredes advises that his friend is an immune-compromised person. Mr. Paredes and the friend do not reside in the same household, but share a vehicle. Mr. Paredes advises that once the friend was evaluated, the friend was hospitalized for two weeks due to her immune-compromised status and suspected COVID-19. However, Mr. Paredes' friend did not meet the required criteria for COVID-19 testing and, therefore, was not tested to confirm or rule out a COVID-19 basis for her illness. Mr. Paredes and his friend remain uncertain whether the friend's illness was COVID-19. A June 2, 2020 note from the friend's doctor regarding the friend's need to self-quarantine due to a COVID-19 concern would lead a reasonable person to conclude that the friend's illness in March 2020 was not COVID-19. Based on what was going on with his friend in March, Mr. Paredes concluded on his own that he must also be "COVID suspected. Mr. Paredes asserts that he needed to self-quarantine because he shared the vehicle that the friend used to get to the hospital. Mr. Paredes notified TLC that he needed to self-quarantine. TLC had recently announced that it would approve unpaid sick leave without requiring medical documentation if the leave was related to COVID-19-like symptoms or a need to self-isolate due to COVID-19 exposure. When Mr. Paredes contacted the employer, the employer told him to take the time he needed as unpaid sick time and that no documentation would be required.

On or about March 24, 2020, Mr. Paredes began to experience symptoms of an illness. On or about March 25, 2020, Mr. Paredes sought medical evaluation and was diagnosed with Influenza B. The medical provider advised Mr. Paredes to stay home. The medical provider told Mr. Paredes he could return to work 72 hours after his fever broke. Mr. Paredes advises that he did not feel well until April 6, 2020. Mr. Paredes did not return to the employment at that time.

On April 10, 2020, Mr. Paredes' roommate was evaluated in connection with an illness. Mr. Paredes has provided an "After Visit Summary" pertaining to his roommate. The summary indicates that cough and suspected COVID-19 virus infection were addressed as part of an April 10, 2020 appointment. The document does not indicate that the medical provider

concluded the roommate had COVID-19, was suspected of having COVID-19, or was exposed to COVID-19. Ms. Paredes points to his roommate's illness, whatever that illness was, as the basis for Mr. Paredes not returning to work in April 2020.

On May 4, 2020, Mr. Paredes had a telemedicine appointment with a physician's assistant at the University of Iowa Hospitals and Clinics (UIHC). On May 3, Mr. Paredes had begun to experience fever and diarrhea. The provider referred Mr. Paredes for further assessment by the UIHC Illness Like Influenza (ILI) clinic. Mr. Paredes has provided a medical note from the May 4 appointment. The note indicates that Mr. Paredes was evaluated for respiratory symptoms. This further indicates:

Max will need to remain at home until they have been fever-free for 72 hours without the use of fever-reducing medicine AND other symptoms have improved AND at least 10 day have passed since their symptoms first appeared.

The note makes no reference to suspected COVID-19 illness or exposure.

On May 15, 2020, Mr. Paredes was evaluated in-person by a nurse practitioner at the UIHC ILI clinic. Mr. Paredes' main complaints at that time were cough and shortness of breath. Mr. Paredes' fever and diarrhea had resolved within a few days after the May 4 appointment. The nurse practitioner concluded on May 15, 2020 that Mr. Paredes' symptoms were likely not caused by the novel coronavirus, but were instead likely caused by another virus. The nurse practitioner collected a specimen from Mr. Paredes for COVID-19 screening and forwarded the test kit to a lab for analysis. The nurse practitioner made a "standing" or tentative diagnosis of novel coronavirus, pending outcome of the screening test. The nurse practitioner referred Mr. Paredes to the ILI Respiratory Clinic and for a follow-up telemedicine appointment with the ILI clinic. Because Mr. Paredes had been ill for 10 days without improvement, the nurse practitioner recommended that he wait to return to work until after his symptoms improved. Mr. Paredes has provided a medical excuse pertaining to the May 15 appointment, which indicates Ms. Paredes was evaluated for respiratory symptoms. The note further states:

Max will need to remain at home until they have been fever-free for 72 hours without the use of fever-reducing medicine AND other symptoms have improved AND at least 10 days have passed since their symptoms first appeared.

The note does not refer to suspected COVID-19 illness or exposure. Given that Mr. Paredes' symptoms had first appeared on May 3, 2020, the 10-day period referenced in the note would already have expired at the time of the May 15 appointment. Mr. Paredes had at that point been fever-free a week or more. The COVID-19 screening test subsequently indicated that Mr. Paredes did not have COVID-19.

On May 27, 2020, Mr. Paredes had a follow-up telemedicine appointment with a nurse practitioner at the UIHC on May 27, 2020. The record of that visit indicates that Mr. Paredes was at that time placed on "COVID-19 suspected Home Monitoring." Mr. Paredes had been experiencing symptoms for 23 days and his condition had worsened during the preceding two days. The nurse practitioner referred Mr. Paredes for a follow up appointment with the UIHC Respiratory Clinic for assessment and possible x-rays.

On May 28, 2020, Mr. Paredes was evaluated in-person by a UIHC physician's assistant. Mr. Paredes' chief complaints at the time were cough, sweats, fatigue, headache and facial swelling. Mr. Paredes reported that he had been experiencing cough, fatigue, muscle aches chills, headache, and fevers during the preceding month, but that he felt his symptoms were

slowly improving and his cough was getting better. The physician's assistant noted the improvement in Mr. Paredes' reported issues and prescribed an antibiotic to address the facial swelling.

On June 2, 2020, Mr. Paredes has a follow-up telemedicine assessment with a nurse practitioner from the UIHC ILI Respiratory clinic. Mr. Paredes reported that he was feeling better, but that his girlfriend was now showing symptoms of COVID-19 and was waiting for test results. The nurse practitioner determined that Mr. Paredes did not meet the criteria for continued "home monitoring" for suspected COVID-19. Mr. Paredes requested a further appointment to follow his girlfriend's receipt of her test results.

Mr. Paredes has provided additional medical documentation pertaining to the friend who was hospitalized in March 2020. The June 2, 2020 medical note indicates that the friend should remain out of work from May 27, 2020 to June 10, 2020 "due to concern for coronavirus." The note does not indicate that friend had COVID-19 or that the friend had been exposed to COVID-19 and does not reference Mr. Paredes. A June 12, 2020 note concerning the friend indicates the friend tested negative for COVID-19.

In early June 2020, Mr. Paredes contacted the employer to request a leave of absence. The request was still pending at the time of the June 9 2020 appeal hearing.

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) 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.

(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.

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), (10), (29), and (35) provide 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.

...

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

...

(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 effectively create limited and temporary exceptions 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 thereafter is self-quarantined. These scenarios also included circumstance wherein the claimant is ill with COVID-19. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

At the time Mr. Paredes established the original claim that was effective March 22, 2020, he was sick with Influenza B, was unable to work, and was unavailable for work. The Influenza B illness continued until April 5, 2020. Mr. Paredes is not eligible for benefits for the two-weeks between March 22, 2020 and April 4, 2020.

Mr. Paredes did not meet the able and available requirements during the benefits weeks between April 5, 2020 and May 2, 2020 and is not eligible for benefits for that period. The weight of the evidence fails to establish a legitimate basis for Mr. Paredes' absence from his employment during the period of April 6, 2020 through the benefit week that ended May 2, 2020. Mr. Paredes was not ill during this time and was instead electing to stay home rather report for available work. The weight of the evidence fails to establish a bona fide COVID-19 related basis for Mr. Paredes remaining off work during this period. The evidence does not establish that Mr. Paredes' roommate had COVID-19 or that it was necessary for Mr. Paredes to self-quarantine in connection with his roommate's concern about COVID-19.

Mr. Paredes continued to be unavailable for work during the period that began May 3, 2020. On or about May 3, 2020, Mr. Paredes became ill with an upper respiratory illness that was not COVID-19. Mr. Paredes was evaluated on May 4 and May 15, 2020. On May 15, Mr. Paredes was tested for COVID-19 and that test indicated he did not have COVID-19. Mr. Paredes continued to be unavailable for work due to illness until a follow-up appointment on May 27, 2020. Mr. Paredes did not meet the able and available requirements during the benefit weeks between May 3 2020 and May 23, 2020 and is not eligible for benefits for that period.

As of Wednesday, May 27, 2020, Mr. Paredes had been advised by a medical provider to self-quarantine due to the possible COVID-19. Effective Tuesday, June 2, 2020, the medical provider discharged Mr. Paredes from the COVID-19 self-quarantine. Even through the assertion of a COVID-19 link to this "home monitoring" time appears dubious, in light of the provider's precaution of placing Mr. Paredes on home monitoring during the period of May 27 until June 2, the administrative law judge concludes that Mr. Paredes satisfied the COVID-19 amended able and available expectations during the week of May 24-30, 2020 and is eligible for benefits for that week, provided he meets all other eligibility requirements. In connection with the CARES Act, 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. Based on this Agency pronouncement, the employer's account will not be charged for any benefits paid to the claimant for the benefit week that ended May 30, 2020.

Mr. Paredes has not been available for work within the meaning of the law since June 2, 2020. The evidence indicates there is no bona fide health reason for the continued absence and certainly not one based on COVID-19. Mr. Paredes was released on home monitoring on the Tuesday of that week, but elected not to return to work at all that week. Effective May 31, 2020, benefits are denied based on the claimant's failure to meet the able and available requirements. The able and available disqualification shall continue until the claimant demonstrates that he is indeed available for work. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, Workforce Development must recover the benefits and the claimant must repay the benefits, even if the claimant was not at fault in receiving the benefits.

Because this decision affirms the disqualification for benefits for the period that included March 22, 2020 through May 9, 2020, the \$1,463.00 in regular benefits that Mr. Parede received for seven weeks between March 22, 2020 and May 9, 2020 is an overpayment of benefits that Mr. Paredes must repay.

PL116-136, Sec. 2104 provides, in pertinent part:

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Because Mr. Paredes was disqualified for regular benefits during the period of March 29, 2020 through May 9, 2020, he was also disqualified for the \$3,600.00 in Federal Pandemic Unemployment Compensation (FPUC) that he received for that period. The FPUC benefits are an overpayment of benefits that Mr. Paredes must repay.

DECISION:

The May 18, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant did not meet the able and available requirements during the period of March 22, 2020 through May 23, 2020 and is not eligible for benefits for that period. The claimant met the COVID-19 amended able and available requirements during the week that ended May 30, 2020 and is eligible for benefits that week, provided he meets all other eligibility requirements. The employer's account will not be charged for benefits paid to the claimant for the week that ended May 30, 2020. The claimant subsequently has not met the able and available requirements since the benefit week that began May 31, 2020. The able and available disqualification shall continue until the claimant demonstrates that he is indeed available for work within the meaning of the law. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,463.00 in regular benefits for the period of March 22, 2020 through

May 9, 2020. The claimant is overpaid \$3,600.00 in FPUC benefits for the period of March 29, 2020 through May 9, 2020.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

July 14, 2020
Decision Dated and Mailed

jet/sam