

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**GARY L HASH**  
Claimant

**APPEAL NO. 20A-UI-05811-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROWNELLS INCORPORATED**  
Employer

**OC: 04/12/20**  
**Claimant: Appellant (2)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Gary Hash filed a timely appeal from the June 3, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. Hash requested and was granted a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. After due notice was issued, a hearing was held on July 8, 2020. Mr. Hash participated. Linnea Lubkeman, Human Resources Generalist, represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

**ISSUE:**

Whether Mr. Hash was able to work and available for work within the meaning of the law during the period of April 12, 2020 through June 13, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gary Hash is employed by Brownell's Incorporated as a part-time fire arms retail sales associate at the employer's Grinnell retail store and averages about 25 to 30 hours per week with seasonal fluctuations in the number of work hours. Mr. Hash's wage is \$15.60 per hour. Mr. Hash's supervisors are Teresa Barber and Nina Bartlett.

Mr. Hash is 73 years old and resides with his wife, who is 66 years old. Mrs. Hash recently diagnosed with blood cancer, is undergoing chemotherapy, which leaves her with a compromised immunity. Mr. Hash facilitates care for his wife. In light of the COVID-19 pandemic, Mrs. Hash's doctor advised Mr. Hash against continuing to work at the employer's retail store out of concern that he might bring the COVID-19 virus home to his immune-compromised wife.

Mr. Hash did not approach the employer to request a leave of absence. Rather, one of his supervisors, Ms. Bartlett, continued to encourage Mr. Hash to go off work for the safety of his family in light of COVID-19 and Mrs. Hash's serious health condition. After Mr. Hash worked his shift on March 25, 2020, he began a period of approved time off from the employment at Ms.

Bartlett's urging. The employer's retail store remained open and the employer continued to have the same work available for Mr. Hash during his time away from work.

At the time, Mr. Hash went off work, the employer had transitioned office staff to working from home in light of COVID-19, but had taken few steps to protect retail store employees from the spread of COVID-19. There might be upwards of 30 customers on the sales floor at one time. The employer's safety measures were at that point limited to having Mr. Hash spray counters with disinfectant on an hourly basis.

Ms. Bartlett did not involve the employer's human resources personnel in the discussion about having Mr. Hash go off work. When the human resources personnel learned a couple weeks later that Mr. Hash had gone off work, the human resources personnel characterized the time away as an approved leave of absence and authorized the absence through June 12, 2020.

Mr. Hash returned to work on June 13, 2020. By that time, the employer had implemented a number of safety measures to hinder the spread of COVID-19 at the retail store. Mr. Hash continues in the employment.

Mr. Hash established an original claim for benefits that was effective April 12, 2020. Iowa Workforce Development set Mr. Hash's weekly benefit amount at \$291.00. Mr. Hash made weekly claims for nine weeks between April 12, 2020 and June 13, 2020.

For the week that ended April 18, 2020, Mr. Hash reported zero regular wages and \$489.00 in vacation pay and received no unemployment insurance benefits. The money Mr. Hash reported as vacation pay for that week was in fact a \$500.00 COVID-19 related bonus the employer paid to front-line employees. The COVID-19 bonus was based on work Mr. Hash performed on or before March 25, 2020. Mr. Hash earned no wages and had no vacation pay to Mr. Hash for the week that ended April 18, 2020.

Mr. Hash reported zero wages for each of the three weeks between April 19, 2020 and May 9, 2020 and received \$291.00 in benefits for each of those three weeks.

Mr. Hash reported zero regular wages and \$162.00 in holiday pay for the week that ended May 16, 2020 and received \$201.00 in reduced regular benefits for that week. However, what Mr. Hash reported as holiday pay was in fact a \$174.92 merit increase that the employer paid on May 15, 2020 and made retroactive to January 1, 2020. The pay was based on work Mr. Hash performed for the employer between the start of the year and March 25, 2020. The employer did not pay any holiday pay to Mr. Hash for the week that ended May 16, 2020.

Mr. Hash reported zero wages for each of the three weeks between May 17, 2020 and June 6, 2020. Mr. Hash received \$291.00 in regular benefits for the week that ended May 23 but received no benefits for the weeks that ended May 30 or June 6, in light of the June 3, 2020, reference 01, decision that denied benefits.

Mr. Hash returned to the employment on June 13, 2020 and made a weekly claim for the week that ended June 13, 2020. Mr. Hash reported the \$128.00 in wages he made for working that day.

For each of the five weeks between April 22, 2020 and May 27, 2020, IWD also paid \$600.00 in Federal Pandemic Unemployment Compensation to Mr. Hash. The FPUC benefits totaled \$3,000.00.

**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) 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.

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.

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). These scenarios included circumstances wherein the claimant is caring for an ill family member. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

In response to the economic impact of COVID-19, 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 weight of the evidence establishes that Mr. Hash was on an approved leave of absence during the period of March 26, 2020 through June 12, 2020. Mr. Hash did not request the leave of absence. Rather he acquiesced in the leave of absence after the supervisor's repeated urging. The leave of absence was based on COVID-19, was based on Mrs. Hash's immune-compromised state, was based on a doctor's advice that Mr. and Mrs. Hash self-quarantine, and was based on Mr. Hash's role in facilitating care for his spouse. While Mr. Hash would not meet the usual test of availability, the evidence establishes that he met the COVID-19 modified able and available requirements. Mr. Hash is eligible for benefits for the period of April 12, 2020 through June 13, 2020, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant for the period of April 12, 2020 through June 13, 2020.

**DECISION:**

The June 3, 2020, reference 01, is reversed. The claimant was able to work and met the COVID-19 modified availability requirement during the period of April 12, 2020 through June 13, 2020. The claimant is eligible for benefits for the period of April 12, 2020 through June 13, 2020, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant for the period of April 12, 2020 through June 13, 2020.



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James E. Timberland  
Administrative Law Judge

August 7, 2020  
Decision Dated and Mailed

jet/mh