

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN J SMITH
Claimant

MENARD INC
Employer

APPEAL NO. 20A-UI-08163-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

John Smith filed a timely appeal from the July 9, 2020, reference 01, decision that denied benefits effective April 19, 2020, based on the deputy's conclusion that Mr. Smith was on a leave of absence that he requested and that the employer approved, that he was voluntarily unemployed, and that he was not available for work. After due notice was issued, a hearing was held on August 24, 2020. Mr. Smith participated. Paul Hammell represented the employer and presented testimony through Dough Yeoman. Exhibits 1, A, B and C 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 was able to work and available for work during the period of April 19, 2020 and July 4, 2020.

Whether the employer's account may be charged for benefits paid to the claimant for the period of April 19, 2020 through July 4, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Smith is employed by Menard, Inc. as a part-time morning freight stocker. On April 24, 2020, Mr. Smith requested a leave of absence at his doctor's urging. For more than a year, Mr. Smith has been prescribed Humira, an arthritis medication known to suppress the immune system. Prior to submitting his leave request, Mr. Smith provided the employer with a memo from Kent Walker, M.D.:

I am writing in regards to my patient, John Jack Smith. I have had the pleasure of taking care of Mr. Smith for a chronic medical condition that leaves him vulnerable to infection. It is my medical opinion that he would be best served by being off work, and with minimal exposure to the general public during the duration of the COVID-19 pandemic. This will be especially true during the period of social distancing as recommended by the CDC guidelines and the Iowa Governor Reynolds. If you have any questions, please do not hesitate to contact me.

On April 27, 2020, the employer approved Mr. Smith's leave request for the period of April 25, 2020 through June 26, 2020. Prior to commencing the approved leave of absence, Mr. Smith last performed work for the employer on April 22, 2020.

Mr. Smith established an original claim for benefits that was effective April 19, 2020. Iowa Workforce Development set his weekly benefit amount for regular benefits at \$156.00. Menard, Inc. is the sole base period employer in connection with the claim. Mr. Smith made weekly claims for the 11 consecutive weeks between April 19, 2020 and July 4, 2020. For the week that ended April 25, 2020, Mr. Smith reported \$130.00 in benefits and received \$65.00 in regular benefits. For each of the weeks between April 26, 2020 and June 27, 2020, Mr. Smith reported zero wages and received \$156.00 in regular benefits. For each of the weeks for which regular benefits were paid, Iowa Workforce Development also paid \$600.00 in Federal Pandemic Unemployment Compensation (FPUC). Mr. Smith returned to work on Monday June 29, 2020, pursuant to his agreement with the employer's human resources coordinator. For the week that ended July 4, 2020, Mr. Smith reported \$185.00 in wages and received no unemployment insurance benefits. Mr. Smith then discontinued his unemployment insurance claim.

During the period of approved leave, the employer continued to have the same work available to Mr. Smith as the employer had provided throughout the employment.

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.

Iowa Admin. Code r. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 immune-compromised and is advised by a medical professional to self-quarantine. See <https://www.iowaworkforcedevelopment.gov/COVID-19>, updated March 30, 2020.

Under the usual able and available analysis, Mr. Smith would not meet the able and available requirements for the period of April 19, 2020 through July 4, 2020. However, Mr. Smith did meet IWD's COVID-19 modified able and available requirements for the weeks between April 19, 2020 and June 27, 2020. Mr. Smith is immune-compromised. During the benefit weeks between April 19, 2020 and June 27, 2020, Mr. Smith was sequestering at home pursuant to his doctor's advice. Mr. Smith is eligible for benefits for the period of April 19, 2020 through June 27, 2020, provided he is otherwise eligible. Mr. Smith is not eligible for benefits for the week that ended July 4, 2020 because he was back at work under this regular hours and wages during that week. See Iowa Administrative Code rule 871-24.23(23).

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.

Then employer account of Menard, Inc. will not be charged for the benefits paid to Mr. Smith for the period of April 19, 2020 through June 27, 2020.

DECISION:

The July 9, 2020, reference 01, decision is modified in favor of the claimant/appellant as follows. The claimant was able to work and available for work pursuant to the COVID-19 modified requirements during the period of April 19, 2020 through June 27, 2020. The claimant is eligible for benefits for the period of April 19, 2020 through June 27, 2020, provided he meets all other eligibility requirements. The claimant was not unemployed, did not meet the unemployment insurance "availability" requirement for the week that ended July 4, 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 April 19, 2020 through June 27, 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

August 27, 2020
Decision Dated and Mailed

jet/sam