

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JERRY L MCCARTY**  
Claimant

**CONAGRA FOODS PACKAGED FOODS**  
Employer

**APPEAL NO. 20A-UI-06314-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (4)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Jerry McCarty filed a timely appeal from the June 12, 2020, reference 01, decision that denied benefits effective April 12, 2020, based on the deputy's conclusion that Mr. McCarty was on an approved leave of absence that he requested, was voluntarily unemployed, and was not available for work. After due notice was issued, a hearing was held on July 21, 2020. Mr. McCarty participated and was represented by Gunther Anderson, who also provided testimony. Pixie Allan of ADP/Equifax represented the employer and presented testimony through Sara Valey. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

**ISSUES:**

Whether the claimant has been able to work and available for work within the meaning of the law since April 12, 2020.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jerry McCarty is employed by Conagra Foods Packaged Foods, L.L.C. as a full-time maintenance technician. Mr. McCarty's work hours are 3:00 p.m. to 11:00 p.m. Monday through Friday. Mr. McCarty's work duties include responding to and assisting with production line maintenance issues while production is in process and other repair projects away from the production line. The nature of Mr. McCarty's duties requires that Mr. McCarty be physically present in the employer's plant to perform the duties. Mr. McCarty last performed for the employer on March 30, 2020. Mr. McCarty thereafter requested and was approved for a leave of absence. Mr. McCarty suffers from severe asthma and receives a one-month shot of a high-cost medication to treat his asthma.

In connection with the arrival of COVID-19 in Iowa, Mr. McCarty's doctor recommended that Mr. McCarty self-quarantine. Mr. McCarty's doctor provided a medical note to Mr. McCarty in which the doctor strongly recommended that Mr. McCarty go off work for an extended period due to COVID-19. Mr. McCarty was initially off work pursuant to a vacation request. Mr. McCarty then requested a leave of absence and the employer approved a leave of absence

for the period of April 13, 2020 through June 15, 2020. Mr. McCarty continued off work pursuant to his doctor's advice until he returned to perform full-time work for the employer during the week of June 14-20, 2020. Mr. McCarty earned \$1,150.40 in wages for that week. Mr. McCarty commenced a second approved leave of absence for the period beginning June 21, 2020. The employer has extended the approved leave through August 17, 2020. During both leaves, the employer continued to have full-time work available for Mr. McCarty. Though the employer has taken steps to implement CDC recommended safety measures to hinder the spread of COVID-19, the employer has not consistently enforced mask-wearing.

Mr. McCarty established an original claim for benefits that was effective April 12, 2020. Iowa Workforce Development set the weekly benefit amount at \$500.00. Conagra Foods is the sole base period employer. By the time of the July 21, 2020 appeal hearing, Mr. McCarty had made consecutive weekly claims for 14 weeks between April 12, 2020 and July 18, 2020. Mr. McCarty received benefits for the weeks between April 12, 2020 and June 6, 2020. Mr. McCarty reported his wages for the week that ended June 20, 2020 and did not receive benefits for that week.

### **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 (23) 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.

...

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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

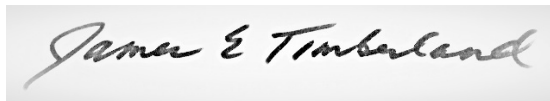
If a claimant to whom unemployment insurance benefits are paid is in the employ of a base period employer at the time he is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to 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. Based on this Agency pronouncement, the employer's account will not be charged for any benefits paid to the claimant for the period beginning April 12, 2020.

Under the usual able and available analysis, Mr. McCarty would not meet the available requirements for any week during which he has been on an approved leave of absence. However, under the COVID-19 modified able and available requirements, Mr. McCarty has been able to work and available for work within the meaning of the law for the period of April 12, 2020 through June 13, 2020 and for the period beginning June 21, 2020 through at least July 18, 2020. Mr. McCarty is an immune-compromised person due to his severe asthma. During the approved leave periods, Mr. McCarty has been off work due to his doctor's advice, based on the increased risk posed to Mr. McCarty by community spread of COVID-19. With the exception of the week that ended June 20, 2020, Mr. McCarty is eligible for benefits for the period beginning April 12, 2020, provided he is otherwise eligible. Mr. McCarty cannot be deemed unemployed during the week that ended June 20, 2020 because he worked his regular hours that week and earned full-time wages. The employer's account will not be charged for benefits paid to Mr. McCarty in connection with this COVID-19 based claim.

**DECISION:**

The June 12, 2020, reference 01, is modified in favor of the claimant as follows. With the exception of the benefit week that ended June 20, 2020, the claimant has been able to work and available for work within the meaning of the law beginning April 12, 2020 and is eligible for benefits, provided he meets all other eligibility requirements. The claimant was not unemployed during the week that ended June 20, 2020 and is not eligible for benefits for that week. The employer's account will not be charge for benefits paid to the claimant in connection with this COVID-19 based claim.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

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James E. Timberland  
Administrative Law Judge

August 25, 2020  
Decision Dated and Mailed

jet/scn