

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL R BRINGLESON
Claimant

MENARD INC
Employer

APPEAL 21A-UI-04564-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer/appellant, Menard Inc., filed an appeal from the January 26, 2021 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 9, 2021. The claimant, Michael R. Bringleson, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Jacob Goff.

The administrative law judge took official notice of the administrative records. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to and available for work?
Is the claimant still employed at the same hours and wages?
Is the employer’s account subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer on May 21, 2020 and worked as a full-time laborer until his December 22, 2020 permanent separation. (The issue of claimant’s permanent separation/requalification has yet to been addressed by the Benefits Bureau.)

Claimant established a claim for unemployment insurance benefits with an effective date of November 29, 2020. Claimant notified employer that he had tested positive for COVID-19. Claimant provided a doctor’s note to confirm his diagnosis. Claimant took an approved leave of

absence from November 18, 2020 through December 7, 2020. (See Employer Exhibit 1). Work had been available for claimant had he not been sick. Claimant returned to work December 8, 2020 and worked his regular full-time hours until his separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective November 29, 2020.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

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 Admin. Code r. 871-24.23(23) provides:

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

(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.

The administrative law judge recognizes the claimant has filed his current claim due to hardship related to the COVID-19 pandemic. Here, the employer has work available for the claimant. However, the claimant informed the employer he was unable to work due to testing positive for COVID-19. The employer agreed to allow the claimant time off for that reason. The claimant is considered to be on a leave of absence and is not available for work, according to Iowa law. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits. See Iowa Admin. Code r. 871-24.23(10)

Effective December 8, 2020, claimant resumed full-time employment and was no longer unemployed. Benefits are denied. See Iowa Admin. Code r. 871-24.23(23).

The issue of claimant's permanent separation (or requalification) effective December 22, 2020, is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The unemployment insurance decision dated January 26, 2021, (reference 03) is REVERSED. The claimant is not able and available for work effective November 29, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's permanent separation (or requalification) effective December 22, 2020, is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

April 13, 2021
Decision Dated and Mailed

jlb/ol

NOTE TO CLAIMANT:

This decision determines you are not eligible for regular unemployment insurance benefits. 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 you do not qualify for regular unemployment insurance benefits due to disqualifying separations and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). You will need to apply for PUA to determine your eligibility under the program. More information about how to apply for PUA is available online at:

www.iowaworkforcedevelopment.gov/pua-information

If you have applied and have been approved for PUA benefits, this decision will not negatively affect your entitlement to PUA benefits.

You may find additional information about food, housing, and other resources at <https://covidrecoveryiowa.org/> or at <https://dhs.iowa.gov/node/3250>