

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEVEN J SEMPEK**  
Claimant

**MENARD INC**  
Employer

**APPEAL 20A-UI-13968-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/10/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

On November 2, 2020, the claimant filed an appeal from the October 29, 2020 (reference 01) unemployment insurance decision that denied benefits because of claimant was on a leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on January 4, 2020. Claimant Steven J. Sempek participated. Employer Menard, Inc. participated through Tony Attanasio. Employer's Exhibit 1 was admitted.

**ISSUES:**

Is the claimant able to and available for work?  
Is the claimant on a voluntary leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 5, 2014. Claimant works for employer as a full-time industrial mechanic.

On May 11, 2020, claimant requested leave through employers emergency leave program for COVID-19 related circumstances. (Employer's Exhibit 1). Claimant requested the leave because his wife was about to have a baby and he wanted to limit exposure to COVID-19. He also needed to provide childcare for his other child because daycare was closed. The leave was granted and claimant was off work beginning May 12, 2020. He returned to work on June 9, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective May 10, 2020.

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. 871-24.23(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.

(17) The claimant left because of lack of child care.

Here, claimant was on a leave of absence due to having a newborn and a child at home without daycare. Claimant has not established he was able to and available for work, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20. Therefore, claimant is not eligible for regular, state-funded unemployment insurance benefits from the effective date of the claim.

Even though claimant is not eligible for regular unemployment insurance benefits under state law, the claimant may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

**DECISION:**

The October 29, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not available for work effective May 10, 2020, and regular, state-funded unemployment insurance benefits are denied. Claimant may be eligible for Pandemic Unemployment Assistance.



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Stephanie Adkisson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

January 21, 2021  
Decision Dated and Mailed

sa/mh

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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 under state law 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.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**