

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IVONNE LUCERO
Claimant

MENARD INC
Employer

APPEAL 18A-UI-09145-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/05/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2018, (reference 03) decision, that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2018. Claimant participated. Employer participated through Justin Taylor, Non-Conveyable Manager and was represented by Austin Stewart, Attorney at law. Employer's Exhibits 1 through 6 were admitted into the record.

ISSUE:

Is the claimant able to and available for work effective August 5, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: When claimant's employment with Menards ended she was working part-time. She is now working part-time for a new employer who picks her up and takes her home from work as her automobile, while working now, is not registered and cannot be legally driven. When the claimant gets paid she plans to pay the registration fee so that she will be able to driver herself to and from work.

She has four children and has made daycare arrangements for all four. The three older children attend school and have an after school day care they can attend. The claimant has daycare for the baby beginning on September 21. For now her new employer has allowed her to bring the baby with her to work.

The claimant is not currently enrolled in school. She did not earn any of the wages in her base period while she was attending school.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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(4) provides:

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

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

Iowa Admin. Code r. 871-24.23(5) provides:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

Claimant was denied unemployment benefits because she had no transportation to get to and from work, because she had no child care for her children and because she was thought to be attending school. Effective September 21, the claimant has made arrangements for daycare and alternate transportation arrangements. She is not currently attending school. She is working part-time. The claimant has established that as of September 21, she has solved all of the availability issues that were preventing her from working. Accordingly, benefits are allowed effective September 21, 2018, provided the claimant is otherwise eligible.

Should the claimant begin attending school she should notify Iowa Workforce Development Department so the issue can be addressed at that time.

DECISION:

The August 28, 2018, (reference 03) decision is reversed. The claimant is able to work and available for work effective September 21, 2018. Benefits are allowed, effective September 21, 2018, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs