

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**ROSE M SLATER**  
Claimant

**APPEAL NO. 13A-UI-11090-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 08/25/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated September 24, 2013, reference 02, which held that the claimant was ineligible for unemployment insurance benefits as of August 25, 2013. After due notice, a hearing was held on October 23, 2013, by telephone conference call. The claimant participated personally. The employer participated by Justin Cue, the second assistant store manager. The record consists of the testimony of Rose Slater and the testimony of Justin Cue. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant is eligible for partial unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant works at the employer's store located in Cedar Falls, Iowa. Her date of hire was February 15, 2013. She was hired as a part-time cashier. She was not guaranteed any certain number of hours. The number of hours she worked depended on the amount of store business and the claimant's own availability. The claimant is only able to work 7:00 a.m. to 5:00 p.m. four days a week. She is a full-time student.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that the claimant is a part-time employee. When she was hired, she was not guaranteed any certain number of hours. The hours given to her vary based on business needs and the claimant's own availability. There has been no change in the contract of hire. Since the claimant is still employed and there has been no change in the contract of hire, the claimant is not eligible for partial unemployment insurance benefits.

**DECISION:**

The decision of the representative dated September 24, 2013, reference 02, is affirmed. Unemployment insurance benefits are denied as of August 25, 2013.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/css