

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH M ALIG
Claimant

MENARD INC
Employer

APPEAL 21A-UI-13866-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On June 9, 2021, Kenneth Alig (claimant/appellant) filed an appeal from the June 9, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on July 27, 2020.

After due notice was issued, a telephone conference hearing was held on August 13, 2021. Claimant participated personally. Menard Inc (employer/respondent) participated by Department Manager Jake Goff.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Did the claimant refuse to apply for or accept suitable work?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant began working for employer on March 7, 2008. Claimant most recently performed work for employer on April 2, 2020. Claimant was unavailable for work from that date and continuing until April 1, 2021. Claimant was self-isolating during that time due to the pandemic. Claimant is able and available for work and searching for work effective April 1, 2021. Employer did not offer claimant work in the claim year effective March 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the June 9, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on July 27, 2020

is REVERSED. Claimant did not refuse recall to suitable work during the claim year effective March 28, 2021. He is able and available for work and eligible for benefits effective April 1, 2021.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

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".

Claimant did not refuse recall to suitable work during the claim year effective March 28, 2021 and so is not disqualified for benefits on those grounds. He is able and available for work and searching for work effective April 1, 2021. He is therefore eligible for benefits effective with that date.

DECISION:

The June 9, 2021 (reference 02) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on July 27, 2020 is REVERSED. Claimant did not refuse recall to suitable work during the claim year effective March 28, 2021. He is able and available for work and eligible for benefits effective April 1, 2021.



Andrew B. Duffelmeyer
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August 19, 2021
Decision Dated and Mailed

abd/mn