

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CAILEY L MCCLELLON**  
Claimant

**MENARD INC**  
Employer

**APPEAL 21A-UI-00864-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/23/20**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
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:**

Cailey McClellon (claimant) appealed a representative's November 24, 2020, decision (reference 01) that denied benefits based on her continued employment with Menard (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2021. The claimant participated personally. The employer participated by Heath Streeter, General Manager. The administrative law judge took official notice of the administrative file.

**ISSUES:**

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant started working for the employer on December 17, 2013. She is now working as a full-time on-site manager at the self-storage facility. The employer has a policy that requires employees to quarantine if they have significant contact with a person who tests positive for Covid-19.

The claimant lived with someone who tested positive for Covid-19. She quarantined from August 21, 2020, through September 2, 2020. The claimant dated someone who tested positive for Covid-19. She quarantined from November 26, 2020, through December 8, 2020.

The claimant filed for unemployment insurance benefits with an effective date of August 23, 2020. Her weekly benefit amount was determined to be \$350.00. The claimant received benefits of \$350.00 per week from August 23, 2020, to the week ending September 5, 2020. This is a total of \$700.00 in state unemployment insurance benefits after the separation from

employment. She also received \$600.00 in Federal Pandemic Unemployment Compensation for the two-week period ending September 5, 2020. She filed an additional claim for benefits with an effective date of November 29, 2020, but did not receive any benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant had been in contact with another who was diagnosed with Covid-19. To prevent the spread of a deadly virus, the employer removed and quarantined employees from the workplace. The claimant was not able and available for work during from August 21, 2020, through September 2, 2020, and from November 26, 2020, through

December 8, 2020. The claimant is disqualified from receiving unemployment insurance benefits for the two weeks ending September 5, 2020, and the week ending December 5, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she 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. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

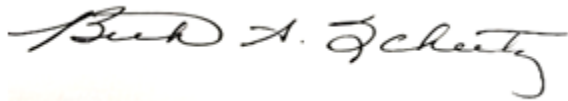
The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The November 24, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective August 23, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*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. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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Beth A. Scheetz  
Administrative Law Judge  
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February 24, 2021  
Decision Dated and Mailed

bas/mh