

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARK S KASUBOSKI

Claimant

APPEAL NO: 19A-UI-01263-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC

Employer

OC: 01/20/19

Claimant: Respondent (4R)

Iowa Code § 96.4(3) – Able and Available

Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the February 8, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 27, 2019. The parties waived proper notice of Iowa Code § 96.4(3), which was listed as a potential issue on the hearing notice but inadvertently omitted under applicable codes. The claimant participated personally. The employer participated through Paul Hammell, attorney at law. Sonja Sievers, human resources coordinator, also testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant on an approved leave of absence?

Is the claimant able to work and available for work effective January 20, 2019?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time in sales and went on a personal leave of absence beginning November 22, 2018 (Employer Exhibit 1). He remained on a personal leave of absence until February 9, 2019 when he was released without restrictions. In the interim, the claimant presented the employer restrictions, which it would not accommodate, and the claimant opened his claim for unemployment insurance benefits with an effective date of January 20, 2019.

For the period of January 20, 2019 through February 9, 2019, the claimant received \$815.00 in unemployment insurance benefits.

Before the claimant went on a leave of absence, he worked approximately 37 hours per week. Since he has returned to work effective February 10, 2019, the claimant has worked a reduced work load, even though he is able to perform 37 hours of work per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is ineligible for benefits from January 20, 2019 through February 9, 2019.

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. 871-24.22(2)j(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In this case, the claimant began a personal leave of absence beginning November 22, 2018 and was off work until February 9, 2019. During this period, he also established his claim for unemployment insurance benefits, with an effective date of January 20, 2019. Since the

claimant was on an approved leave of absence during this period, unemployment insurance benefits must be denied January 20, 2019 through February 9, 2019. Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

The claimant in this case received \$815.00 in unemployment insurance benefits during the period, January 20, 2019 through February 9, 2019. Since he is ineligible for benefits due to being on a leave of absence, he has been overpaid benefits in the amount \$815.00.

REMAND: The issue of whether the claimant has been partially unemployed since February 10, 2019, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 8, 2019, (reference 01) decision is modified in favor of the employer/appellant. The claimant is not able to work and available for work effective January 20, 2019 through February 9, 2019 due to an approved leave of absence. The claimant has been overpaid benefits in the amount \$815.00.

REMAND: The issue of whether the claimant has been partially unemployed since February 10, 2019, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn