

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRANDA M PIERSON
Claimant

APPEAL NO. 12A-UI-02455-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 01/22/12
Claimant: Appellant (1-R)

Section 96.4(3) – Able & Available
Section 96.4(3) – Still Employed Same Hours and Wages

STATEMENT OF THE CASE:

Miranda Pierson filed a timely appeal from the March 8, 2012, reference 01, decision that denied benefits effective January 22, 2012, based on an Agency conclusion that she was not partially unemployed from Menard, Inc. After due notice was issued, a hearing was held on March 30, 2012. Ms. Pierson did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Steve Plower, front end manager, represented the employer. Exhibit One was received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant was partially unemployed from her employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Miranda Pierson was employed by Menard, Inc., as a part-time clerk from April 2011 until she separated from the employer on March 7, 2012. Prior to making a change to her work availability, Ms. Pierson told the employer she was available to work Tuesday, Wednesday, Thursday, and every other weekend during the hours of 9:00 a.m. to 4:00 p.m. In March, Ms. Pierson amended her work availability to 8:00 a.m. to 4:30 p.m. Ms. Pierson did not appear for scheduled shifts on January 22 and March 4 and did not notify the employer of her need to be absent on those days.

Ms. Pierson's work hours during the 36 weeks of employment in 2011 averaged 23.51 per week, with the lowest week being 5.45 hours during the first week of December 2011 and the highest week being 33.81 during the first week of May 2011. Ms. Pierson's work hours during the nine full weeks she worked for the employer during 2012 averaged 22.33, with the highest week being 27.6 hours at the beginning of January 2012 and the lowest week being 5.15 during the week that ended January 28, 2012. The dip in hours that week was attributable in part to a no-call, no-show absence on Sunday, January 22.

Ms. Pierson established a claim for unemployment insurance benefits that was effective January 22, 2012 and discontinued the claim after that week ended on January 28, 2012. Ms. Pierson re-opened the claim at the time she separated from the employment on March 7, 2012.

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 96.19, 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".

An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed. 871 IAC 24.23(26). Contract for hire merely means the established conditions of the employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to

both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence indicates only one week, between the time Ms. Pierson established her claim for benefits and the time she separated from the employment, wherein there was a substantial dip in hours. The evidence indicates that the dip was attributable, at least in part, to Ms. Pierson being absent without notifying the employer for one shift that week. The record the employer provided for that weeks suggests there was another shift that same week where Ms. Pierson worked less than 15 minutes and went home. Ms. Pierson has presented insufficient evidence to establish that the dip in hours during the week that ended January 28, 2012 was attributable to the employer or that she was available to work the hours the employer had for her that week.

The weight of the evidence fails to establish that Ms. Pierson was *not* partially unemployed from Menard, Inc., from the time she established her claim for benefits in January 2012 to the time she separated from the employer on March 7, 2012. Benefits are denied effective January 22, 2012. Ms. Pierson continued to be ineligible for benefits through the week that ended March 3, 2012.

Due to the March 7, 2012 separation, this decision does not address whether Ms. Pierson was able and available for work effective the week that ended March 10, 2012 or beyond. This matter will be remanded to the Claims Division for adjudication of the separation and for determination of whether the claimant has been able and available for work since the week that ended March 10, 2012.

DECISION:

The Agency representative's March 8, 2012, reference 01, is affirmed. The claimant was not partially unemployed from January 22, 2012 through her March 7, 2012 separation from the employment and is not eligible for benefits during the period of January 22, 2012 through March 3, 2012.

This matter is remanded to the Claims Division for adjudication of the separation and for determination of whether the claimant has been able and available for work since the week that ended March 10, 2012 during which she separated from the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw