

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHELSEY L GAMBLIN
Claimant

MENARD INC
Employer

APPEAL 18A-UI-06795-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/13/18
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 14, 2018 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was not willing to work the number of hours required in her occupation. The parties were properly notified of the hearing. A telephone hearing was held on July 10, 2018. The claimant participated personally. The employer was represented by attorney Paul Hammell and participated through witness Lance Gesell. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to and available for work effective May 13, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for unemployment insurance benefits with an effective date of May 13, 2018. She began working for this employer on May 5, 2015 as a full-time general laborer. Sometime in 2016, she was transferred to a position in quality control, which was still a full-time position. Her job duties as a quality control specialist included inspecting the products, taking pictures and doing measurements to ensure quality. Her typical working hours were Monday through Thursday from 4:00 p.m. to 2:30 a.m. She worked occasional weekends when overtime was available.

Beginning January 1, 2018, claimant was not consistently working forty hours per week. Between January 1, 2018 and March 20, 2018, she averaged 33.5 hours per week. Claimant had been absent from work due to her children's illness for at least one week during this time period. On March 1, 2018, claimant injured her back at work. She was treated by a physician and received work restrictions. Those work restrictions included no lifting more than twenty pounds and no repetitive and excessive twisting, bending or stooping. Claimant did not have to change positions or job duties to work within her restrictions because her quality control position job duties fit within her restrictions.

On March 27, 2018, claimant discovered a corpse in the employer's parking lot. She suffered from PTSD following this incident. Between March 20, 2018 and April 17, 2018 claimant averaged 26.42 hours per week. Claimant was absent from some of her scheduled shifts during this time due to back pain and medical appointments for her injury and PTSD. Her physician has since adjusted her medication to help with back pain. On May 1, 2018, claimant met with Mr. Gesell, who instructed her that she would be moving to part-time status (minimum 20 hours per week) because she had not consistently worked forty hours per week since January 1, 2018. Claimant did not choose to switch to part-time status, the employer initiated this. She was to work Mondays and Tuesdays each week from 4:00 p.m. to 2:30 a.m.

The week-ending May 19, 2018 claimant reported that she did not earn any wages. The week-ending May 26, 2018 claimant reported that she earned \$154.00 in wages. The week-ending June 2, 2018 claimant reported that she did not earn any wages. The week-ending June 9, 2018 claimant reported that she earned \$78.00 in wages. Separation from employment occurred the following week. Claimant missed work on occasion from May 13, 2018 through June 9, 2018 due to medical appointments for her work-related back injury and her PTSD.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective May 13, 2018. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant has demonstrated her ability to work within her restrictions since her job duties as quality specialist were never changed after her back injury and PTSD diagnosis. Although she had sporadic absences due to her injury and doctor appointments, claimant consistently worked full-time hours during her employment until the employer unilaterally changed claimant to part-time status. While claimant may have missed work on occasion to attend doctor appointments, she has established that she was available the majority of each week for work. As such, the claimant has demonstrated that she is able to and available for work effective May 13, 2018. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The June 14, 2018 (reference 01) unemployment insurance decision is reversed. The claimant is able to and available for work effective May 13, 2018. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs