

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRAD A LAMP
Claimant

MENARD INC
Employer

APPEAL 16A-UI-02614-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 24, 2016, (reference 01) unemployment insurance decision that denied benefits based. The parties were properly notified about the hearing. A telephone hearing was held on March 24, 2016. The claimant participated personally. The employer participated through Alan Hamblen, Assistant Manager. Claimant Exhibit A and Employer Exhibit 1 were admitted into evidence.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment on April 10, 2012, as a full-time laborer/forklift driver, and is currently employed. The employer has full-time hours available for the claimant to work each week. The claimant has not worked full-time hours beginning January 31, 2016, but has performed part-time work each week. The reason the claimant has not performed full-time work is that he is undergoing chemotherapy, and as a result of medication, he is sometimes too ill to perform work. The claimant has not been issued restrictions by his oncologist, but has been told he can perform work when he feels well enough to do so, and the employer has agreed to allow the claimant to work whenever he can.

REASONING AND CONCLUSIONS OF LAW:

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", unnumbered paragraph 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".

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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code section 96.4-3. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The administrative law judge is sympathetic and recognizes the claimant is currently undergoing chemotherapy and performing work to the extent he can. At the present time, he is working part-time hours, and not full time. Since the claimant is unable to perform his work duties full time due to his personal illness, and full-time work is available, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law.

DECISION:

The February 24, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective January 31, 2016.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/css