

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROSE M SLATER
Claimant

MENARD INC
Employer

APPEAL NO. 14A-UI-07464-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/13
Claimant: Respondent (1R)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 16, 2014, reference 06, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 12, 2014. Claimant participated personally. Employer participated by Stephen Carroll with witness Lauren Bahrman. Employer's Exhibits 1-2 were admitted into evidence.

ISSUES:

Whether claimant is able and available for work.

Was the claimant overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: This matter comes before the court on a question of whether claimant is able and available for work. Through questioning of the claimant it appears that there is no question claimant is able and available for work, and is actively seeking work, with no limitations either physically or through scheduling to limit the work she could receive.

Employer in this matter sought to appeal whether claimant should be seen as a voluntary quit. That matter was not noticed to the parties and claimant did not wish to deal with that issue without proper notice.

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. 871-24.22(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.

There is no claim in this matter as to claimant not being able and available for work. As such, benefits shall be allowed. As benefits are allowed, the issue of overpayment is moot.

Employer has not participated in fact finding in this matter, as per his testimony. Neither party was informed as to any different issues being addressed by the court. The separation issue has not been addressed to date. This matter will be returned to the fact finder on the question of whether the separation of the parties was brought about by a voluntary quit by the claimant with or without good cause.

DECISION:

The decision of the representative dated July 16, 2014, reference 06, is affirmed. Claimant is eligible to receive unemployment insurance benefits provided claimant meets all other eligibility requirements.

This matter will be returned to the fact finder to determine - if a determination has not already been made - the circumstances surrounding the separation between the parties.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css