

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLORIA J UTLEY
Claimant

MENARD INC
Employer

APPEAL 20A-UI-08785-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
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

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 27, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 10, 2020, at 1:00 p.m. Claimant participated with her attorney Jill Davis. Employer participated through its attorney James Anderson and Sonja Sievers, Human Resources Coordinator. Employer's Exhibits 1 – 8 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant is able to and available for work.
Whether claimant is on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Menard on October 18, 2012. Claimant was employed as a part-time cashier. Claimant last performed work for employer on February 17, 2020. Claimant requested a leave of absence from work to have surgery on February 19, 2020 and to recover from the surgery. Employer granted claimant's request. Claimant's leave of absence was expected to end on March 31, 2020. Claimant requested to extend her leave of absence until April 23, 2020, upon the advice of her physician. Employer granted claimant's request for an extension to April 23, 2020.

As April 23, 2020 approached, claimant requested to extend her leave again due to her concerns about Covid-19 and being considered "high risk." Employer granted claimant's request. Claimant's leave was extended to June 26, 2020. As June 26, 2020 approached, claimant requested to extend her leave again due to her continued concerns regarding Covid-19. On June 25, 2020, employer mailed claimant leave of absence documents to complete and return within 15 days of receipt. Employer also required claimant to provide a physician's statement in support of her request for leave. Claimant returned the documents but was unable

to obtain the physician's statement. Because claimant's leave of absence documents were incomplete, employer did not extend claimant's leave and terminated claimant's employment.

Claimant filed an initial claim for benefits effective April 19, 2020. Employer had work available for claimant since April 19, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is on an approved leave of absence and, thus, is not available for work. Benefits are denied.

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 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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

As of the initial claim date, claimant was on an approved leave of absence due to her concerns about Covid-19. While claimant's absence from work may have been for a good reason, it is still considered voluntary. Because claimant was on a leave of absence, she is not considered available for work. Accordingly, claimant is not eligible for unemployment insurance benefits. Benefits are denied effective April 19, 2020.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The July 27, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant is not able to and available for work. Benefits are denied effective April 19, 2020.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

September 14, 2020
Decision Dated and Mailed

acw/sam