

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KARA A DILLE
Claimant

MENARD INC
Employer

APPEAL 20A-UI-13485-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.7(2)a(2) – Employer Chargeability
Iowa Code § 96.3(7) – Overpayment of Benefits
Public Law 116-136 § 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On October 29, 2020, Menard, Inc. (employer) filed an appeal from the October 23, 2020, reference 02, unemployment insurance decision that allowed benefits effective May 31, 2020, based upon the determination Kara A. Dille (claimant) was temporarily laid off and considered able to and available for work. After due notice was issued, a telephone hearing was held on December 28, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Aaron Schoening, Department Manager. The employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Was the claimant able to and available for work effective May 31, 2020?
Has the claimant been overpaid regular unemployment benefits and Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer, as a full-time Area Supervisor, on June 28, 2012. On May 26, 2020, the claimant requested a leave of absence due to COVID-19; she reported that she was entering self-quarantine with no symptoms. The employer granted the claimant's request even though it still had work available for her. The claimant returned to work on June 26.

The administrative record shows the claimant has received \$1,594.00 in regular unemployment insurance benefits and \$2,400.00 in FPUC since filing a claim effective May 31 for the four weeks ending June 27.

REASONING AND CONCLUSIONS OF LAW:

I. Was the claimant able to and available for work effective May 31, 2020?

For the reasons that follow, the administrative law judge concludes that the claimant was not able to and available for work effective May 31, 2020. Regular unemployment insurance 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.

(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.

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.

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 to prove that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant requested a leave of absence and was voluntarily unemployed. Accordingly, she is not eligible for regular unemployment insurance benefits.

II. Has the claimant been overpaid regular unemployment benefits and FPUC?

For the reasons that follow, the administrative law judge concludes the claimant has been overpaid regular unemployment benefits and FPUC.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

PL116-136, Sec. 2104 provides, in relevant part:

EMERGENCY INCREASE IN UNEMPLOYMENT COMPENSATION BENEFITS.

...

(b) Provisions of Agreement

(1) Federal pandemic unemployment compensation.--Any agreement under this section shall provide that the State agency of the State will make payments of regular compensation to individuals in amounts and to the extent that they would be determined if the State law of the State were applied, with respect to any week for which the individual is (disregarding this section) otherwise entitled under the State law to receive regular compensation, as if such State law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to

(A) the amount determined under the State law (before the application of this paragraph), plus

(B) an additional amount of \$600 (in this section referred to as "Federal Pandemic Unemployment Compensation").

....

(f) Fraud and Overpayments

...

(2) Repayment.--In the case of individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the State shall require such individuals to repay the amounts of such Federal Pandemic Unemployment Compensation to the State agency...

Since the claimant is not eligible for regular unemployment benefits, she was overpaid \$1,594.00 in regular unemployment benefits and \$2,400.00 in FPUC from May 31 through June 27. The claimant will be required to repay the benefits received unless the Employment Appeal Board (EAB) overturns this decision on appeal or she is found eligible for Pandemic Unemployment Assistance (PUA).

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The October 23, 2020, reference 02, unemployment insurance decision is reversed. The claimant was not able to and available for work effective May 31, 2020. Benefits are denied. The claimant has been overpaid \$1,594.00 in regular unemployment insurance benefits and \$2,400.00 in FPUC.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600.00 weekly benefit amount in FPUC through July 25. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must self-certify for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.



Stephanie R. Callahan
Administrative Law Judge

January 14, 2021
Decision Dated and Mailed

src/mh

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, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify 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.