

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BILLIE J DRAKE
Claimant

MENARD INC
Employer

APPEAL NO. 21A-UI-16250-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 15, 2021, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 14, 2021. Claimant participated personally. Employer participated by Patty Welsh and Travis Hewitt. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is still employed at the same hours and wages?
Whether claimant is eligible to receive partial benefits?
Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant worked for Menards, a base period employer, full time under the same terms and conditions as contemplated in the original contract of hire until the date of job separation on July 30, 2021.

In April of 2021 claimant contracted Covid. She asked for and received FMLA time off from work for the period of April 11, 2021 through May 24, 2021. During this time claimant was not able and available for work as she was ill and recovering.

At all times relevant, employer had work available to claimant in her full time hours had she been able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially or temporarily unemployed.

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 Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

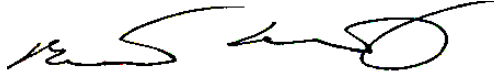
Because the claimant was not able and available for work for the period of April 11, 2021 through May 24, 2021, claimant is not considered partially or temporarily unemployed for that period. Benefits denied.

This matter will be remanded to the fact finder as it appears claimant was denied PUA solely because she had been awarded regular unemployment benefits while off from work. This decision finds claimant is not eligible for regular benefits.

The administrative law judge is additionally including information to file a new application for PUA benefits given this decision denies regular state benefits.

DECISION:

The July 15, 2021, reference 02, decision is reversed. The claimant is not partially or temporarily unemployed and benefits are denied.



Blair A. Bennett
Administrative Law Judge

September 21, 2021
Decision Dated and Mailed

bab/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 due to disqualifying separations 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>.