

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROBERT W LINDSEY
Claimant

APPEAL NO: 18A-UI-08533-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/08/18
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 1, 2018, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 31, 2018. The claimant participated in the hearing. Kim Clark, First Assistant General Manager; Jenn Tomash, Wallcovering Department Manager; and Austin Stewart, Store Counsel; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time wall covering department salesperson at Menard, Inc. on October 17, 2017. He voluntarily left his employment July 25, 2018. The claimant experienced a temporary increase in hours during the employer's "Hop to It" program from April through June 5, 2018 and continued working full-time hours until July 6, 2018.

The employer grew dissatisfied with the claimant's work performance and transferred him from groceries to wall coverings which was an 11:00 a.m. to 4:00 p.m. position where he worked two to three days per week and every other weekend. The claimant did not request a reduced work week.

The claimant voluntarily quit his job with Menard, Inc. and started a new job with Riverside Casino August 6 or 9, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 8, 2018.

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 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) 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.

(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.

The claimant was hired as a part-time employee but was working full-time hours until the employer cut his hours back to part-time in July 2018. The claimant was available to work the hours the employer had available and did not unduly limit the hours required to work in his occupation of retail sales. Accordingly, the claimant is considered able and available for work. Benefits are allowed.

DECISION:

The August 1, 2018, reference 02, decision is reversed. The claimant is able to work and available for work effective July 8, 2018. Benefits are allowed effective the week ending July 14, 2018.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn