

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENDRA KLINE
Claimant

APPEAL NO. 21A-UI-00779-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 05/17/20
Claimant: Appellant (2)

Iowa Code § 96.19(38) – Definitions – Total, partial unemployment
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages

STATEMENT OF THE CASE:

The employer filed an appeal from the December 3, 2020 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 11, 2021. The claimant did not participate. The employer participated through Department Manager Travis Hewitt. Official notice was taken of the administrative record.

ISSUES:

1. Whether claimant is totally, partially or temporarily unemployed?
2. Whether claimant is still employed at the same hours and wages?
3. Whether claimant is able to and available for work?
4. Whether employer's account is subject to charge?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Kendra Kline, began employment with Menard Inc as a part-time general laborer on December 24, 2017. The claimant's regular full-time schedule is 28 hours per week. The claimant's hourly wage is \$14.95. The claimant filed an initial claim for unemployment insurance benefits effective May 17, 2020. The claimant's weekly benefit amount is \$204.00.

The administrative record shows Menard Inc as the only employer in the claimant's base period. Mr. Hewitt was not aware of the claimant working for any other employer.

The employer has a Covid19 infection spread practice that requires employees to remain away from its premises for 14 days if they have tested positive for Covid19.

On September 24, 2020, the claimant reported to Mr. Hewitt she tested positive for Covid19. The claimant was instructed not to report to work until October 9, 2020.

On October 9, 2020, the claimant reported to work. She has been working her regularly scheduled hours since then. The employer would have provided her work during this period if work had been available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was partially or totally unemployed for the weeks ending September 26, October 3, and October 10, 2020. However, the administrative law judge further concludes the claimant is not eligible for benefits because she was not able and available for work for these weeks.

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.

Iowa Code section 96.7(2)a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against

the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The first issues to be determined are whether the claimant was totally, partially or temporarily unemployed and whether she was working the same hours as in her contract of her. To be partially unemployed for any given week, claimant must work less than 36 hours per week (claimant's regular full-time schedule) and earn less than \$219.00 (claimant's weekly benefit plus \$15.00).

The claimant reported earning \$89.00 for the week ending September 26, 2020. As a result, she is partially unemployed for this period because she worked fewer than 28 hours and received less than \$219.00.

The claimant was totally unemployed for the weeks ending October 3, 2020 and October 10, 2020.

The next issue to evaluate is if the claimant was able and available for the weeks in which she was either partially or totally 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 Admin. R. 871-24.23(1) and (10) provide:

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

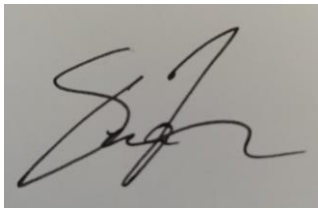
(1) An individual who is ill and presently not able to perform work due to illness.

(10) The claimant requested an 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.

The claimant did not request a leave of absence to be away from work for the period covering the weeks ending September 26, October 3, and October 10, 2020. However, the claimant was ill with Covid19 and is disqualified under Iowa Admin. R. 871-24.23(1). Without the benefit of her testimony, it is not clear when the claimant stopped experiencing symptoms of that illness such that she could have performed her duties. Ultimately, it is the claimant's burden to show she is able and available and she has not met that burden. Since the claimant was not able and available for the period in question, the issue of which employer is subject to charge is moot. Benefits are denied.

DECISION:

The December 3, 2020, (reference 01) unemployment insurance decision is reversed. The claimant was not able and available effective September 20, 2020. Benefits are denied.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

February 23, 2021
Decision Dated and Mailed

smn/mh