

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LATHON MILLER
Claimant

APPEAL NO: 13A-UI-13934-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARDS
Employer

**OC: 11/10/13
Claimant: Respondent (2)**

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Menards (employer) appealed an unemployment insurance decision dated December 12, 2013, reference 02, which held that Lathon Miller (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2014. The claimant participated in the hearing. The employer participated through Noah Mayer, Cross Dock Manager and Heidi Lensch, Human Resources Coordinator. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant is working the same hours and wages as in his original contract of hire with this employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time general warehouse laborer on October 8, 2013 with a guarantee of two days per week. He continues to work for this employer in the same capacity except that he is typically working four days a week.

The claimant filed a claim for unemployment insurance benefits effective November 10, 2013 and has received benefits after the separation from employment in the amount of \$1,592.00.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire. An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code § 96.19(38)(b).

The claimant was hired as a part-time laborer. There has been no separation from his part-time employment and the claimant is currently working for this employer at the same hours and wages as contemplated in his original contract of hire. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits he has received could constitute an overpayment. Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The claimant was overpaid benefits in the amount of \$1,592.00.

DECISION:

The unemployment insurance decision dated December 12, 2013, reference 02, is reversed. The claimant continues to be employed part time in the same hours and wages as contemplated in the original agreement of hire. Benefits are denied. The claimant is overpaid benefits in the amount of \$1,592.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css