

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J MCGRORY
Claimant

MENARD INC
Employer

APPEAL 20A-UI-04631-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On May 26, 2020, the claimant filed an appeal from the May 20, 2020, (reference 01) unemployment insurance decision that denied benefits based on leave of absence from the employer. The parties were properly notified about the hearing. A telephone hearing was held on June 11, 2020. The claimant participated in the hearing. Jeremy Mead, General Manager and Paul Hammell, Employer Attorney, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence.

ISSUES:

Whether the claimant is totally, partially, or temporarily unemployed.
Whether the claimant is able to and available for work.
Whether the claimant is still employed at the same hours and wages.
Whether the 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 has worked for Menard since May 4, 2011. Most recently, the claimant worked for the employer as a part-time hardware morning stock person.

The claimant suffers from Stage 5 kidney failure and when the COVID 19 virus struck the country, the claimant went to his physician and was told he should take as much time off as possible because at that time the employer was not social distancing or wearing masks and the claimant is at high risk due to his underlying medical condition. The claimant went to human resources and was granted a 30-day emergency leave request for COVID 19 related circumstances. He was off work from March 17 through April 13, 2020. He returned to work April 14, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

In order to receive regular unemployment insurance benefits under Chapter 96 of the Iowa Code, a totally unemployed claimant must establish he is able to and available for work. Iowa Code § 96.4(3).

In this case, the claimant was totally unemployed from March 17 through April 13, 2020. Consequently, the issue is whether the claimant is able to and available for work.

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.

Here, the employer had work available for the claimant. However, the claimant informed the employer he was unable to work due to being in the high risk category for COVID 19. The employer agreed to allow the claimant time off for that reason. The claimant has not established he is able to and available for work for that time period, even under the United States Department of Labor's guidance to flexibly interpret this requirement. See Unemployment Insurance Program Letter No. 10-20.

The claimant is considered to have been on a leave of absence due to medical issues and is not able and available for work. Therefore, the claimant is not eligible for regular, state-funded unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. 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 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The May 20, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work from March 17 through April 13, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time as the claimant is able to and available for work.



Julie Elder
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 24, 2020
Decision Dated and Mailed

je/scn

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 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>.