

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY L SCHILLER
Claimant

MENARD INC
Employer

APPEAL NO. 20A-UI-09286-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/01/19
Claimant: Appellant (1)

Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Mary Schiller filed a timely appeal from the July 31, 2020, reference 03, decision that denied benefits effective May 3, 2020, based on the deputy's conclusion that Ms. Schiller was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on September 21, 2020. Ms. Schiller participated. William Kelly, Store Counsel, represented the employer and presented testimony through Becky Peterson. Exhibits 1, A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, KPYX and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the period of May 3, 2020 through July 18, 2020.

Whether the claimant was partially and/or temporarily unemployed during the period of May 3, 2020 through July 18, 2020.

Whether the employer's account may be charged for benefits for the period of May 3, 2020 through July 18, 2020.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mary Schiller was employed by Menard, Inc. as a part-time cashier from January 2, 2020 until July 29, 2020. Ms. Schiller began her employment at the Menard's store in Mason City. Ms. Schiller's \$4,677.00 in 2020 first quarter wages derive exclusively from her work at the Mason City Menard's. Those weekly wages averaged \$359.77. Ms. Schiller's wage was \$11.00 per hour when she worked Monday through Friday and \$13.00 when she worked on the weekend. Ms. Schiller's 2020 first quarter wages reflect that she averaged 32.7 hours or less at the Mason City store. While Ms. Schiller worked at the Mason City store, she maintained open availability for work, meaning that she was open to being scheduled any hours the employer had for her during the employer's hours of operation.

In April 2020, Ms. Schiller requested to transfer to a Menard's store in Madison, Wisconsin. The employer refers to the store as Madison-West. Ms. Schiller wanted to move to the Madison store because her daughter lived in a nearby community and had invited Ms. Schiller to cohabit. Ms. Schiller dealt with the human resources coordinators at the Mason City store and the Madison-West store to move the transfer forward. Ms. Schiller knew at the time she requested and accepted the transfer to a part-time cashiering position at the Madison-West store that the Madison-West store would not commit to providing her the same number of part-time work hours she had received at the Mason City store. The Madison-West human resources coordinator made clear to Ms. Schiller that the number of hours she would receive at the Madison-West store would be determined by Office Manager Marie Melcher, who scheduled cashiers at the Madison-West store.

Ms. Schiller began her new position at the Madison-West store on April 20, 2020. Ms. Schiller provided the employer an availability schedule that indicated she was available to work 1:00 p.m. to close, five days per week. Ms. Schiller was quickly and consistently disappointed in the number of hours of cashiering hours for which she was scheduled. Ms. Schiller picked up additional work hours where possible. Ms. Schiller did not request time off and was not absent from shifts.

Ms. Schiller's weekly work hours were as follows:

<u>Week Ending Date</u>	<u>Hours worked</u>
4/25/20	18.47
5/2/20	28.98
5/9/20	25.60
5/16/20	15.93
5/23/20	26.52
5/30/20	13.50
6/6/20	28.50
6/13/20	27.98
6/20/20	18.42
6/27/20	17.12
7/4/20	21.65
7/11/20	20.73
7/18/20	37.43

Effective the week of July 12-18, 2020, Ms. Schiller transferred to a position in the hardware department and immediately began receiving near full-time work hours.

Ms. Schiller established an additional claim for benefits that was effective May 3, 2020. The additional claim is based on a claim year that began for Ms. Schiller on December 1, 2019. At the start of the claim year, Iowa Workforce Development set Ms. Schiller's weekly benefit amount at \$380.00. Menard, Inc. is not a base period employer. Ms. Schiller made weekly claims for the 11 consecutive weeks between May 3, 2020 and July 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

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. 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.

Iowa Admin. Code r. 871-24.23 (23) and (26) provides:

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

..

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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 hours and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

The evidence establishes that Ms. Schiller was physically and mentally able to work throughout the period of May 3, 2020 to July 18, 2020. Ms. Schiller was available for work throughout the period of May 3, 2020 through July 11, 2020, during which time Ms. Schiller worked the hours the employer made available to her. Ms. Schiller does not meet the "availability" requirement for the week that ended July 18, 2020 because she essentially worked full-time hours.

Ms. Schiller was not partially unemployed during the period of May 3, 2020 through July 18, 2020. Ms. Schiller requested and accepted the transfer to the Madison-West store with full knowledge that there would be no guarantee of a particular number of weekly work hours at that store. In other words, Ms. Schiller initiated and acquiesced in the changed conditions of the employment. Ms. Schiller's "regular hours" at the Madison-West store were whatever part-time hours the employer elected to provide on a week-by-week basis. Ms. Schiller is not eligible for

benefits for the period of May 3, 2020 through July 18, 2020 under a theory of partial unemployment. The employer is not a base period employer and, therefore, is not subject to charge for benefits in the current claim year that began for Ms. Schiller on December 1, 2019 and that will end on November 28, 2020. See Iowa Code section 96.7(2) (regarding base period employer liability).

DECISION:

The July 31, 2020, reference 03, decision is affirmed. The claimant was able to work during the period of May 3, 2020 through July 18, 2020. The claimant was available for work during the period of May 3, 2020 through July 11, 2020. The claimant was not partially unemployed at any time between May 3, 2020 and July 18, 2020 and is not eligible for benefits under a theory of partial unemployment. Benefits are denied for the period of May 3, 2020 through July 18, 2020. The employer is not a base period employer and is not subject to charge for benefits in the claimant's current claim year.



James E. Timberland
Administrative Law Judge

September 23, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. 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.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you will be required to repay the benefits you have received.**