

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA J STOLZ
Claimant

APPEAL NO. 10A-UI-16096-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/18/10
Claimant: Appellant (2)

Section 96.4-3 – Able to and Available for Work
Section 96.19-38-b - Eligibility for Partial Unemployment Insurance Benefits

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 16, 2010, reference 04, that concluded the claimant was ineligible to receive partial unemployment insurance benefits since her hours and/or wages had not been reduced. A telephone hearing was held on January 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Andrew Schrader participated in the hearing on behalf of the employer with a witness, Rachal Nye. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claim the claimant filed effective July 18, 2010, was based on wages from her full-time job with Behavioral Health Resources and from her part-time job with the employer. The claimant also had lag-quarter wages from her full-time employer, Crystal Properties Inc. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

FINDINGS OF FACT:

The claimant has worked part-time for the employer since August 2003 and continues to work part-time, averaging 8 to 10 hours per week, usually working one day per week plus additional hours when called. The job has always been a job to earn extra income to supplement the income from her full-time job. The claimant worked part-time in this job while she worked full-time for Behavioral Health Resources. The claimant filed for unemployment insurance benefits after her full-time employment with Behavioral Health Resources ended in 2009. She was awarded benefits, which were not charged to the employer, Menard Inc., because the job was considered supplemental employment. The claimant continued to work part-time for the employer and to report her part-time wages while looking for full time work.

The claimant obtained a full-time job as an office manager for Crystal Properties Inc. and worked there from May 15 to July 19, 2010, when that full-time job ended. She worked for the employer part-time while she worked for Crystal Properties Inc. and afterward.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 18, 2010. Her weekly benefit amount was determined to be \$113.00 based on wages

reported by her full-time job, Behavioral Health Resources, and part-time job with the employer. The claimant also had lag-period wages from her full-time job with Crystal Properties Inc.

The claimant has had weeks since filing the claim for unemployment insurance benefits in which she had earnings less than her earnings allowance of \$128.00.

In mid-September 2010, the claimant asked for and received extra hours. She was working about 25 hours per week, but found the amount of standing involved to be too physically demanding. After a few weeks, she asked to go back to working 8 to 10 hours per week, which was her normal work schedule.

The claimant continues to look for full-time work in an office setting, which is work for which she is suited by training and experience and that she is physically able to do.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for partial unemployment insurance benefits. The claimant filed a claim requesting partial unemployment insurance benefits for the weeks in which her earnings were less than the weekly benefit amount plus \$15.00.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

b. 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.

An individual shall be deemed partially unemployed in any week in which 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.

The evidence establishes when the claimant applied for unemployment, she had been separated from her regular job with Crystal Properties, Inc. but continued to work part-time for the employer earning less than her earnings limit. While the statute talks about "odd jobs," the rule on supplemental employment (871 IAC 23.43) makes it clear that a claimant who separates from her regular employer and who remains in the employ of her part-time employer is eligible for benefits. The rule exempts an employer's account from charge for benefits paid to a claimant during the first benefit year, but not for a second benefit year if the claimant only worked only for the part-time employer during the base period and the lag quarter.

The claimant's base-period wages are not solely from Menard Inc., and her lag quarter wages include wages from her full-time job with Crystal Properties Inc. She is entitled to partial unemployment insurance benefits in weeks in which her earnings were less than \$128.00. The

employer is exempt from charge because the claimant was receiving the same employment as she received during her base period.

The unemployment insurance law provides that an individual be able to and available for work. Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The claimant is able to work full-time in her customary occupation, which involves office work where she is not required to stand for extended periods. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated November 16, 2010, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is exempt from charge.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw