

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE A LUMPKIN
Claimant

APPEAL NO: 13A-UI-12622-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 10/06/13

Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Bruce A. Lumpkin (claimant) appealed a representative's November 4, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with Menard, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2013. The claimant participated in the hearing. Gary Roehm, in-house counsel, appeared on the employer's behalf and presented testimony from one witness, Heidi Lensch. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on February 25, 2008. He worked full time as a general laborer in the employer's Shelby, Iowa distribution center, working a four ten-hour day per week schedule. As of the date of the hearing in this matter, his last day of actual work was May 16, 2013. He went on a leave of absence for medical reasons as of that date. He underwent a hip surgery on May 21, 2013; there was no evidence that the medical condition was work related.

The leave was covered under FMLA (Family Medical Leave) through August 8, 2013. As the claimant was still unable to return to work by that date, he requested and was allowed to remain on a personal leave which was extended several times as the claimant was still unable to return to work without significant restrictions. Most recently the leave was extended through December 28, 2013. The claimant's current restrictions are no more than 50 pounds lifting, no more than 25 pounds carrying, no more than eight hours per day, no more than 32 hours per week. The claimant cannot perform his regular job duties within these restrictions.

While the employer still considers the claimant on a leave of absence from which he could return to work, as his FMLA leave had expired and he was unable to return to work, the employer did send him a letter on October 4 advising him that his regular insurance was cancelled and offering him COBRA insurance. The claimant then established his claim for unemployment insurance benefits effective October 6, 2013.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2); 871 IAC 24.23(10).

The claimant’s current unemployment is due to his being on a leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits he was under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits for that period.

DECISION:

The representative’s November 4, 2013 decision (reference 01) is affirmed. The claimant was not able and available for work effective October 6, 2013, and the period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits until or unless his circumstances change, such as he does sufficiently recover and offer to return to work without restrictions, and at that time the employer does not have work available to him.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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