

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYNDA R DREIBELBIS
Claimant

MENARD INC
Employer

APPEAL 21A-UI-05038-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
871 IAC 24.23(10) – Voluntary Leave of Absence

STATEMENT OF THE CASE:

Lynda Dreibelbis (claimant) appealed a representative's February 8, 2021, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits as of November 15, 2020, because a leave of absence was granted by Menard (employer) at the claimant's request. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2021. The claimant participated personally. The employer participated by Nathan Dieringer, General Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is available for work and whether the claimant was on an approved leave of absence.

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 on October 23, 2018, and is currently working as a part-time head cashier. She requested and the employer granted a leave of absence from November 13, 2020, through December 7, 2020. The claimant and her husband were diagnosed with Covid-19. She returned to work on December 8, 2020.

The claimant filed for unemployment insurance benefits with an effective date of November 15, 2020. Her weekly benefit amount was determined to be \$267.00. The claimant received benefits of \$267.00 per week from November 15, 2020, to the week ending December 5, 2020. This is a total of \$801.00 in state unemployment insurance benefits after November 15, 2020. The claimant was approved for Pandemic Unemployment Assistance (PUA) in a decision dated December 17, 2020. Benefits were effective November 8, 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1) and (10) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

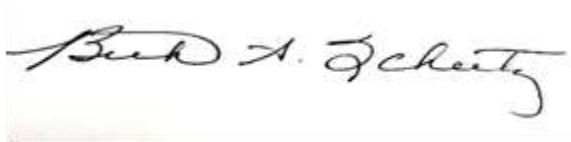
The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a leave of absence and the employer granted the request. The claimant requested the leave because she was medically unable to work. The claimant is considered to be voluntarily unemployed, or unable to work,

during the period of the leave of absence. She is not eligible to receive unemployment insurance benefits as of November 15, 2020.

DECISION:

The representative's February 8, 2021, decision (reference 01) is affirmed. The claimant is considered to be unavailable for work and is not eligible to receive unemployment insurance benefits from November 15, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

April 21, 2021
Decision Dated and Mailed

bas/ol