

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NATASHA S MEZA
Claimant

MENARD INC
Employer

APPEAL NO. 16A-UI-12450-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/16/16
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 9, 2016 reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on November 29, 2016. Claimant participated personally. Employer participated by attorney Paul Hammel, and witnesses Bob Rankin and Melissa Gerovac. Employer's exhibits 1-3 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was injured in 2015 while at work. Since that date, claimant had worked for employer under her work restrictions. At times, claimant would reinjure her arm while at work, but claimant continued to do her job, although she might require slight amounts of time off to care for her pain. Claimant continues to be able and available for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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(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.

Inasmuch as the injury was work-related and the claimant has shown for the last year that she continues to work in a productive manner, the claimant has established the ability to work. Benefits shall be allowed.

DECISION:

The decision of the representative dated November 9, 2016, reference 02 is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective October 16, 2016, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs