

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VAN H BLOUNT
Claimant

APPEAL NO. 11A-UI-11229-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 07/03/11
Claimant: Appellant (1)

Section 96.4-3 – Able and Available/Still Employed at Same Hours and Wages

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 17, 2011, reference 02, which denied unemployment insurance benefits, finding the claimant was still employed part-time at the agreed-upon hours and wages and therefore could not be considered to be partially unemployed. After due notice was issued, a telephone hearing was held on September 20, 2011. The claimant participated personally. The employer participated by Mr. Jeremy Peters, assistant general manager.

ISSUE:

At issue is whether the claimant is still employed at the same hours and wages.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Van H. Blount was employed by Menards on July 28, 2010. Mr. Blount was hired at that time to work as a full-time manager trainee. The claimant's continued employment in the full-time capacity was contingent upon the claimant successfully passing management examinations.

On August 15, 2010, Mr. Blount had failed to successfully pass the second of the manager's examinations given to him and could not continue in the capacity of a full-time manager trainee. Mr. Blount accepted the option of taking part-time employment at that time.

As a part-time employee for Menards, the claimant was not guaranteed any minimum number of working hours each week. The claimant agreed to the reduced hourly pay as of August 15, 2010, and continued in the employment, agreeing to work as a part-time worker. The claimant was subsequently separated from employment. The claimant's separation from employment is not a subject of the appeal hearing on the claimant's appeal of his availability as a part-time employee at the same hours and wages.

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".

871 IAC 24.23(26) provides:

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

(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.

The claimant was initially hired as a full-time worker. However, on August 15, 2010, Mr. Blount accepted a change in the agreement of hire, accepting part-time employment with no guarantee as to the minimum number of working hours available each week. The claimant also understood and agreed to a reduction in pay at that time. The claimant continued to work thereafter as a part-time worker and was still employed in the part-time position at the rate agreed to on August 15, 2010. He understood that the number of hours available to him each week were dependent upon the employer's needs. The determination that the claimant was not eligible to receive unemployment insurance benefits because he was not available due to his work with the employer is correct. Unemployment insurance benefits are withheld, because the claimant is not able and available for work based upon part-time employment.

DECISION:

The representative's decision dated August 17, 2011, reference 02, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits, because he has not met the availability requirements set forth in Iowa Code section 96.4-3. Benefits are denied as of July 3, 2011.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw