

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DON C BROWN
Claimant

MENARD INC
Employer

**APPEAL 21A-UI-17959-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 3/22/20
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 5, 2021 (reference 03) unemployment insurance decision that found claimant was denied benefits due to not being Able and Available. The parties were properly notified of the hearing. A telephone hearing was held on October 8, 2021, at 3:00 PM. Claimant participated. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Claimant was employed beginning April 24, 2014 as a part time cashier. The last day worked was March 20, 2020. Claimant filled out a voluntary separation form that stated that he was unable to work due to the current COVID-19 restrictions due to his concern of his age and family members. Continuing work was available for claimant had he not resigned. The separation issue is not at issue in this hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 20, 2020 because of his age, health condition and concerns related to COVID-19 exposure.

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".

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(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as claimant was not able to work due to his age and the concerns regarding COVID-19 exposure, he was not able to or available for work during that time

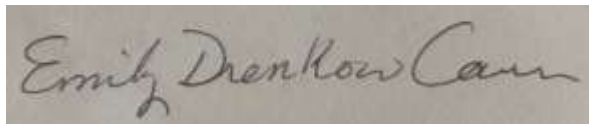
Inasmuch as claimant removed himself from work without a medical directive, he is not considered able to or available for work.

DECISION:

The August 5, 2021, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective March 22, 2020. Benefits are denied.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", is displayed within a rectangular frame.

Emily Drenkow Carr
Administrative Law Judge

October 22, 2021
Decision Dated and Mailed

ed/ol