

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT G YOUNG
Claimant

MENARD INC
Employer

APPEAL 21A-UI-17421-DH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(1) – Illness

STATEMENT OF THE CASE:

On August 5, 2021, the claimant, Robert Young, filed an appeal from the July 26, 2021 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was unable to work due to illness. The parties were properly notified of the hearing. A telephonic hearing was held on September 29, 2021. The claimant participated and testified. The employer, Menard Inc., participated in the hearing through Zach Demming, general manager. Employer's Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed by Menards and is still working for the employer.

Claimant worked on Friday, April 23, 2021 and was scheduled to work Saturday, April 24, 2021. On April 24, 2021, claimant called work to report that he was ill and not coming into work and would likely get tested for COVID-19. Claimant remained off work until his first day back to work, May 10, 2021. Claimant was too sick to return to work until approximately May 6 or 7 (claimant did not recall specific date, but it was more than half-way through the week). The administrative record shows that claimant received no wages for the weeks ending May 8 and 15, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and not available for work starting April 24, 2021 through and including May 7, 2021. Benefits are denied.

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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

Claimant called in sick and was not able to work starting April 24, 2021. Claimant remained too sick to work and off work as a result through and including May 7, 2021.

Claimant was not able to and available for work. Benefits are denied.

DECISION:

The July 26, 2021 (reference 02) unemployment insurance decision is **AFFIRMED**. Claimant was not able to work and not available for work for the period of April 24, 2021 through and including May 7, 2021, making May 2, 2021 the effective date for denial. Claimant returned to work May 10, 2021.



Darrin T. Hamilton
Administrative Law Judge

October 12, 2021
Decision Dated and Mailed

dh/kmj