

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GARY KRILEY
Claimant

MENARD INC
Employer

APPEAL 21A-UI-10456-SN-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

OC: 06/07/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 22, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was not able to and available for work for the week ending June 7, 2020. After due notice was issued, a telephone conference hearing was scheduled to be held on June 29, 2021. The claimant participated. The employer participated through Department Manager Aaron Schoening. Exhibits 1-13 were received into the record. The administrative law judge took official notice of the agency records.

ISSUE:

Was the claimant able to work and available for work effective for the week ending June 7, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant, Gary Kriley, started working as a part-time general laborer for the employer, Menard Inc, on February 24, 2011. The claimant's rate of pay in May 2020 was \$15.45. He worked a set schedule from 4:00 p.m. to 12:30 a.m. Monday through Friday.

In June 2020, the claimant spoke with his doctor about his mortality risk regarding Covid19 infection, given he is 65 years old and has an underlying health condition. The claimant's doctor stated he should not be working in public given his mortality risk.

On June 4, 2020, the claimant requested and was granted a leave of absence effective June 7, 2020. This leave of absence was subsequently extended multiple times.

On May 17, 2021, the claimant returned from leave because he had been vaccinated and the threat of mortality risk was gone. The claimant was not compensated by the employer while he was on leave. The employer would have provided the claimant work, if he had not been on a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective June 7, 2020.

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. 871-24.22(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the

availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 provides:

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

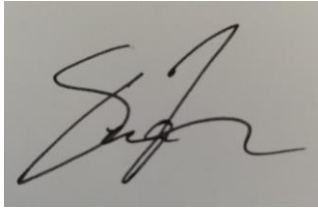
(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant was on a leave of absence from June 7, 2020 to May 17, 2021. As a result, the claimant is disqualified from receiving regular unemployment insurance benefits for this period under Iowa Admin. Code r. 871-24.23(10). While the claimant contends and the administrative law judge agrees that his reason for requesting the absence was a good reason, the reason for the request is not relevant to whether the leave will disqualify a claimant from benefits. In this sense, the administrative rule is somewhat misleading in saying that it is "voluntary." What is important is that the request of a leave of absence signals the claimant's unavailability for work for the duration of the leave. Accordingly, he is not eligible for unemployment insurance benefits.

DECISION:

The March 22, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective June 7, 2020. Benefits are denied.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

July 15, 2021
Decision Dated and Mailed

smn/lj