

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VAN H BLOUNT**  
Claimant

**APPEAL NO: 10A-UI-14599-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 12/27/09**

**Claimant: Appellant (2)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Van H. Blount (claimant) appealed a representative's October 20, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Menard, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2010. The claimant participated in the hearing. Caroline Larson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant employed by the employer for less than his usual hours and wages and eligible for full or partial unemployment insurance benefits? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 28, 2010. Originally he worked full time (40 to 50 hours per week) as a manager trainee at a rate of \$11.25 per hour. He remained in that position until September 12, 2010, when he was demoted to a part-time sales/millwork position at a rate of \$8.35 per hour. The reason for the demotion was that he had failed a management trainee test three times, resulting in his being dropped from the program.

He has continued to work in the position at least through the date of the hearing. His hours ranged from about 17 hours per week, to a high of about 35 hours per week; his average for the 12-week period between September 12 and November 28 was 24.47 hours. He has not missed any scheduled work.

The claimant established an unemployment insurance benefit year effective December 27, 2009. He reopened the claim by filing an additional claim effective September 12, 2010, upon the reduction of his hours.

## **REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides that a claimant is deemed partially unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00. Iowa Code § 96.19-38-b.

Beginning on or about September 12, the employer was not providing the claimant with substantially the same employment as it had previously provided. While the employer may have had a good business reason for reducing the claimant's hours and wages, it is not a reason which renders the claimant unable or unavailable for work or ineligible for at least partial unemployment insurance benefits; he has not restricted his availability for work and did not seek the reduction of hours. Inability to pass a required examination is not an action resulting in disqualification. Holt v. Iowa Department of Job Service, 318 N.W.2d 28 (Iowa App. 1982). Consequently, the claimant is qualified to receive at least partial unemployment insurance benefits upon the filing of his claim effective, provided he is otherwise eligible. To be eligible for benefits for any particular week, the claimant must file a weekly claim for that week reporting his wages from all employers earned (not paid) for that week; the amount of his eligibility will then be determined pursuant to the formula set out by the statute. 871 IAC 24.52(8); Iowa Code § 96.3-3.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period for his December 27, 2009 claim year began July 1, 2008 and ended June 30, 2009. The employer did not employ the claimant during this time, and therefore the employer is not a base period employer and its account is not chargeable for benefits paid to the claimant during that claim year. As to its chargeability in any future benefit years, that determination would need to be made based upon whether the employer was employing the claimant on his same hours and wages or on a reduced basis at that time.

## **DECISION:**

The unemployment insurance decision dated October 20, 2010 (reference 03) is reversed. The claimant is eligible for partial unemployment insurance benefits beginning September 12, 2010 as he was not employed under his same hours and wages. The employer's account is not subject to charge in the December 27, 2009 benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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