

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**JOSHUA N RUER**  
Claimant

**APPEAL 18A-UI-01807-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 01/07/18**  
**Claimant: Appellant (2R)**

---

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 31, 2018, (reference 01) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on March 6, 2018. Claimant participated personally. Employer participated by Joe Falatic, General Manager and was represented by Paul Hammell, Attorney at Law. Employer's Exhibits 1-11 were admitted into evidence.

**ISSUE:**

Does the claimant meet the definition of being considered partially unemployed?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant worked for employer as a full-time yard shipping employee. From May 12, 2017 through January 7, 2018, it did have full-time work available for the claimant as contemplated in the original contract of hire. Claimant's wages had been reduced because he had engaged in work-related misconduct on November 14, 2017. Employer continued to offer full-time work through January 7, 2018.

On January 12, 2018, claimant submitted an availability change form because he was not available to work as many hours. Employer granted claimant's request, and his hours were reduced from an average of 38.9 hours a week to 28.45 hours a week. Claimant continued working those hours until he was separated from the employment on February 10, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not partially unemployed beginning on the January 7, 2018.

Claimant reduced his hours voluntarily for personal reasons during the week of January 7, 2018. Claimant restricted his availability for work, and was not able to and available for work beginning on that date.

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 Code section 96.19(38) provides:

*"Total and partial unemployment"*.

a. An individual shall be deemed *"totally unemployed"* in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code section 96.7(2)a(2)(a), (b), and (c) provides:

2. *Contribution rates based on benefit experience.*

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for

misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Iowa Admin. Code r. 871-23.43(4)a provides, in part:

**(4) *Supplemental employment.***

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time, base period employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account, including the reimbursable employer's account, may be relieved of benefit charges....

Because claimant reduced his hours voluntarily for personal reasons he is not considered partially unemployed beginning on January 7, 2018.

**DECISION:**

The January 31, 2018, (reference 01) decision is reversed. The claimant is not partially unemployed and benefits are denied beginning on January 7, 2018.

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

---

Duane L. Golden  
Administrative Law Judge

---

Decision Dated and Mailed

dlg/scn