

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARYL A PATTERSON
Claimant

COMMONWEALTH ELECTRIC CO
Employer

APPEAL NO. 21A-UI-03143-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/21
Claimant: Respondent (2)**

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 16, 2021, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 16, 2021. Employer participated by Kelsey Drexel. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Commonwealth Electric Co, a base period employer, as an apprentice electrician under the same terms and conditions as contemplated in the original contract of hire. Under these terms, claimant would ask for and be granted weeks off from work on multiple weeks a year to further her education. This will allow claimant to become a journeyman electrician at some point and allow employer to have a more qualified employee. Claimant will then be able to receive a higher level of pay.

Claimant was employed through the local electrical workers union, which sets the terms and conditions for claimant to become a journeyman electrician. Included in those terms is classes to be held during a number of weeks every year. Employer agreed with these terms and agreed to hire claimant understanding that claimant would not be working for a number of weeks every year. Employer has never paid claimant for the weeks when claimant has not worked because she was in class.

Claimant missed work on the weeks ending January 9, 2021 and February 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not partially unemployed.

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.

Because the claimant is working under the same terms and conditions she has contracted to work, claimant is not considered partially unemployed. Claimant and employer agreed prior to hire that claimant would occasionally miss weeks to further her education and employer agreed that once claimant became a journeyman electrician, claimant would move to a higher pay scale. As this was an understood absence at the time of hire meant to benefit both parties, benefits are denied for the weeks ending January 9, 2021 and February 13, 2021.

DECISION:

The February 16, 2021, reference 01, decision is reversed. The claimant is not partially unemployed and benefits are denied for the weeks ending January 9, 2021 and February 13, 2021.



Blair A. Bennett
Administrative Law Judge

March 18, 2021
Decision Dated and Mailed

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