

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COLE B HEABERLIN
Claimant

ABC ELECTRICAL SERVICES LLC
Employer

APPEAL NO. 21R-UI-12149-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/27/20
Claimant: Respondent (2R)

Iowa Admin. Code r. 871-24.23(26) – Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 6, 2021, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on July 27, 2021. Employer participated by Lee Cochran. 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 previously worked for ABC Electrical services, a base period employer, full time as an apprentice electrician under the same terms and conditions as contemplated in the original contract of hire. Claimant signed his union contract while working for another employer. Employer's witness testified that the terms and conditions of the apprenticeship contract are the same irrespective of the union ship where one works as an apprentice. Said contract includes wording that the apprentice must attend classes offered multiple times a year. Said classes are offered during the week while other workers are doing regular work.

Claimant was off from work for the week ending November 14, 2020 in order to attend apprenticeship classes. Employer still had ongoing work for claimant had he not been attending those classes.

Claimant subsequently separated from this employment on or around February 5, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

In this matter, there was no plant shutdown as employer continued to have an ongoing business while claimant attended union training. Claimant entered in to the union training program knowing he would have to periodically miss work. Claimant chose this path, and chose not to attend work on the week ending November 14, 2020 such that he could continue with his

studies in hopes of becoming a journeyman electrician. Benefits are denied for the week ending November 14, 2020.

This matter will be remanded to the fact finder for a determination on the separation issue which occurred at or around February 5, 2021.

DECISION:

The January 6, 2021, reference 01, decision is reversed. The claimant is not partially or temporarily unemployed for the week ending November 14, 2020 and benefits are denied.

REMAND:

This matter will be remanded to the fact finder for determination of the separation issue which occurred between the parties at or around February 2021.



Blair A. Bennett
Administrative Law Judge

August 2, 2021
Decision Dated and Mailed

bab/kmj