

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAY P PETERSON

Claimant

APPEAL 21A-UI-07377-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WALDINGER CORPORATION

Employer

OC: 10/25/20

Claimant: Respondent (4)

Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Code §96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.7(2)a(2) – Same Base Period Employment
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The Waldinger Corporation, the employer/appellant, filed an appeal from the March 2, 2021, (reference 02) unemployment insurance decision that allowed benefits as of January 3, 2021. The parties were properly notified about the hearing. A telephone hearing was held on May 21, 2021. The employer participated through Joe Porepp, electrical manager. Mr. Peterson participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is Mr. Peterson partially unemployed and able to and available for work?

If so, is the employer's account subject to charge?

Is Mr. Peterson on a leave of absence?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Peterson began working for the employer in May 2018. He currently works as a full-time apprentice electrician. He is employed with the employer through a contract with his union. The agreement between the employer and the union provides that Mr. Peterson will attend training at certain times, not be available for work, and not be paid by the employer for those trainings. Mr. Peterson must attend the trainings

Mr. Peterson attended training the weeks of January 3, 2021, February 14, 2021, and April 18, 2021. The employer did not pay Mr. Peterson for these weeks. The employer had work available for Mr. Peterson these weeks if he had not attended trainings. Mr. Peterson remains employed by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Peterson was on a leave of absence the weeks of January 3, 2021, February 14, 2021, and April 18, 2021.

Iowa Code § 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 § 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 Admin. Code r. 871-24.23 (26) 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.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) 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.

In this case, Mr. Peterson was on an agreed to leave of absence the weeks of January 3, 2021, February 14, 2021, and April 18, 2021. Mr. Peterson is in an apprenticeship program and understands that to be in the program he will need occasional time off work to attend trainings. Mr. Peterson submitted himself to the program by choosing to start work in the apprenticeship program. The employer and Mr. Peterson's representative, the union, agreed that Mr. Peterson would be on leave to attend training but the employer would not pay him. It is understandable that Mr. Peterson would take steps to get paid for the weeks he was in training. However, since he was not available to work the weeks of January 3, 2021, February 14, 2021, and April 18, 2021, regular, state-funded unemployment insurance benefits are denied for those weeks.

Even though Mr. Peterson is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136 during these time periods. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive up to the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed.

DECISION:

The March 2, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant, the employer. Mr. Peterson was a leave of absence the weeks of January 3, 2021, February 14, 2021, and April 18, 2021. Regular, state-funded unemployment insurance benefits are denied during these weeks.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 28, 2021
Decision Dated and Mailed

dz/kmj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and you were or you are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA) benefits. **You must apply for PUA benefits to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>.
- **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you've received so far.**
- Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs, including the PUA program, effective June 12, 2021. **However, you can still apply for PUA benefits at the link above.**