

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC J KRUSE

Claimant

THE WALDINGER CORPORATION

Employer

APPEAL 21A-UI-14057-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1(A)(37) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2) – A&A – Benefit Eligibility Conditions
Iowa Admin. Code r. 871-24.23 – Availability Disqualifications

STATEMENT OF THE CASE:

Employer filed an appeal from the June 11, 2021 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 16, 2021, at 3:00 p.m. Claimant did not participate. Employer participated through Joe Porepp, Des Moines Electrical Manager. No exhibits were admitted.

ISSUES:

Whether claimant was able to work and available for work.
Whether claimant was on an approved leave of absence.
Whether claimant was totally, partially or temporarily unemployed.
Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time with The Waldinger Corporation as an Electrical Apprentice. Claimant is in the apprenticeship program with Local 347. Employer does not require union membership or participation in the apprenticeship program in order to maintain employment.

In order to remain in good standing in the apprenticeship program, claimant must attend week-long classroom training. The union schedules the training and notifies employer of the dates. Employer allows claimant to attend the classroom training.

Claimant attended apprenticeship training from March 22, 2021 through March 26, 2021. Employer had work available that week if claimant had not attended training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1(A)(37) 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 96.4(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 Admin. Code r. 871-24.22(2)(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual

offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(5), (10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified f or being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(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.

Claimant was not off of work because of a plant shutdown, vacation, inventory or lack of work or other emergency. Therefore, claimant's time off to attend training does not meet the definition of "temporarily unemployed" and claimant is not exempt from the requirement that he be able to and available for work.

Claimant was not available for work during the week ending March 27, 2021 because he was attending training required by his union to maintain good standing in the apprenticeship program. Employer does not require claimant to attend the training or participate in the apprenticeship program in order to remain employed. Claimant chose to be a member of the apprenticeship program and, thus, attend training. Claimant's absence during the week ending March 27, 2021 was an approved leave of absence or a period of voluntary unemployment. Claimant has not met his burden of proving that he was available for work. Accordingly, benefits are denied for the week ending March 27, 2021.

DECISION:

The June 11, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was not available for work for the week ending March 27, 2021. Benefits are denied for the week ending March 27, 2021.



Adrienne C. Williamson
Administrative Law Judge
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August 19, 2021

Decision Dated and Mailed

acw/kmj