

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOSHUA E THOURNOUT**  
Claimant

**MODERN PIPING INC**  
Employer

**APPEAL 19A-UI-09586-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/03/19  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able to and Available for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 25, 2019 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits because he was voluntarily unemployed and not available for work due to a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on January 2, 2020. The claimant, Joshua E. Thournout, participated personally. The employer, Modern Piping Inc., did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records, including the fact-finding documents.

**ISSUES:**

Is the claimant able to work and available for work effective November 3, 2019?  
Is the claimant voluntarily unemployed due to a requested leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant remains employed full-time with this employer as a foreman. His job duties include organizing workers on job sites, assisting customers, and ensuring proper materials are available.

The employer asked the claimant to take a voluntary temporary layoff due to lack of work. Claimant filed his initial claim for unemployment insurance benefits effective November 3, 2019 due to the temporary layoff. He has not performed services since filing his initial claim for benefits.

Claimant has been notified that he will be returning to work for this employer following this temporary layoff on Monday, January 6, 2019. Claimant has been able to and available for work during each of the weekly-continued claims that he has filed. Claimant has not earned any wages or vacation pay while on voluntary layoff. Claimant has earned pay for a holiday and intends to report the holiday pay when filing his next weekly-continued claim for benefits.

## REASONING AND CONCLUSIONS OF LAW:

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

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(10) 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.

(emphasis added).

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.

The credible evidence establishes that the claimant never requested a voluntary leave of absence and is not voluntarily unemployed. Claimant has been temporarily totally unemployed due to a lack of work pursuant to Iowa Code § 96.19(38). As such, benefits are allowed effective November 3, 2019, provided the claimant is otherwise eligible.

**DECISION:**

The November 25, 2019 (reference 01) unemployment insurance decision is reversed. The claimant did not request a leave of absence. The claimant is laid off due to lack of work. Benefits are allowed effective November 3, 2019, provided the claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn