

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM Y LEWIS
Claimant

MODERN PIPING INC
Employer

APPEAL NO. 19A-UI-08323-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/30/18
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available
Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.19(38) – Partial and Temporary Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 18, 2019 reference 07, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on November 14, 2019. Claimant participated personally. Employer participated by Lisa Hadenfeldt.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant is partially or temporarily unemployed?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a plumbing apprentice for employer. In the middle of September, employer alerted claimant that he would not be working the week of September 22 through 28, 2019, as he needed to go to an apprentice training week required for him to eventually get to be a union pipefitter.

The union to which claimant belongs – local 125 – and all mechanical companies hiring union employees entered into a contract including work and educational requirements, among other things. Said contract does not specifically spell out the need to take classes. Although it is not specifically laid out in the contract, apprentices are required to take periodic classes.

Claimant stated that he offered to work outside of his training schedule but was not able to do so. Employer stated that they did have work outside of the regular hours when claimant would be in class, but not in the immediate area.

REASONING AND CONCLUSIONS OF LAW:

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Claimant remained able and available to work, except for those times when employer told claimant he would not be coming to work. No leave of absence was ever requested by claimant or granted by employer. For the week of September 22-28, 2019 claimant was temporarily unemployed.

DECISION:

The decision of the representative dated October 18, 2019, reference 07 is reversed. Claimant is eligible to receive unemployment insurance benefits for the week of September 22-28, 2019, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn