

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**MIKE S ESSEX**  
Claimant

**APPEAL NO: 19A-UI-02577-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MODERN PIPING INC**  
Employer

**OC: 05/06/18**  
**Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant, Mike S. Essex, filed an appeal from the March 1, 2019 (reference 04) initial decision which concluded he was ineligible for benefits for the week ending February 19, 2019 because he was not able to and available for work. After proper notice, a telephone hearing was conducted on April 12, 2019. The claimant participated. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

Claimant Exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant able to and available for work for the week ending February 16, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 6, 2016, as a full-time HVAC apprentice. Claimant is affiliated with Local Union 124. As part of the apprenticeship program with the local union, claimant is required to undergo training until he obtains journeyman status.

The union requires claimant attend the training. Employer requires claimant to attend the training. Employer has an agreement with the union with respect to the apprenticeship program. For the week ending February 16, 2019, claimant attended required apprenticeship training. Employer did not have work available and he was not paid by employer for attending the training. Employer did not schedule the claimant for the company that week and did not pay him for the week of apprenticeship training that had been scheduled. No evidence was presented that employer attempted to recall claimant to return to work during the week in question. Rather, when the week was over, claimant resumed full-time employment effective February 17, 2019, as scheduled by employer.

Claimant was not required to look for new work during the one week period because he remained attached to employer and was to return back to work the following week.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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.

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".

In the case at hand, claimant was employed as an apprentice worker and enrolled in a mandatory apprenticeship training and was not scheduled by employer to work for the one week period in question, employer did not schedule claimant to work during the one week training based upon collective bargaining agreement in effect between the company and the union.

Under the terms of the agreement, employer did not schedule claimant to work and he received no pay from the company. Claimant, however, was expected by the employer to attend the training to retain his employment with the company. It does not appear employer's intent was done to prejudice claimant in his employment relationship with the company, but to enhance claimant's value to the company because the training was directly related to his employment.

Claimant was physically able to work and was available for work but not scheduled or recalled to work by the company during the one week period. Claimant was not required to look for new work during the one week period because he remained attached to employer and was to return back to work the following week. The claimant's one week suspension of work was initiated by the employer and constituted a short-term lay-off. The administrative law judge concludes that the evidence establishes claimant has satisfied the able and available requirements of the law and is eligible to receive unemployment insurance benefits for the week ending February 16, 2019, provided that he meets all the eligibility requirements.

Iowa Admin. Code r. 871-24.23(23) provides: Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Effective February 17, 2019, claimant is ineligible for unemployment because he is performing work full-time.

**DECISION:**

The representative's unemployment insurance decision dated March 1, 2019, (reference 04) is modified in favor of the claimant/appellant. Claimant was on a short-term layoff and is considered to be able and available for work during the layoff. Benefits are allowed for the week ending February 16, 2019, provided he is otherwise eligible. Effective February 17, 2019, the claimant is ineligible for benefits due to full-time employment.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/scn