

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORDAN B MAYER
Claimant

COMMONWEALTH ELECTRIC CO
Employer

APPEAL 21A-UI-02709-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/10/19
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

On January 8, 2021, the employer/appellant filed a timely appeal from the Iowa Workforce Development decision dated December 30, 2020 that determined claimant was eligible unemployment benefits. A telephone hearing was held on March 10, 2020. The parties were properly notified of the hearing. The claimant did not participate. The employer participated through Kelsey Drexel, payroll manager. The employer's exhibits were received into the record. Official notice was taken of the administrative record.

ISSUE:

Was the claimant able and available to work?

FINDINGS OF FACT:

Claimant began working for Commonwealth Electric Co. on July 28, 2014. Claimant is currently employed full time as an apprentice electrician. Claimant is employed with Commonwealth Electric Co. through a contract with a union. The employer's contract with the union determines whether claimant is at work or in training. Claimant must attend union-sponsored training to maintain membership in the union; claimant must be a union member to maintain employment with Commonwealth Electric Co. as an apprentice electrician. The terms of the apprenticeship program are agreed to by the union and the employer in the collective bargaining agreement, and through JATC as authorized by that agreement.

Claimant attended union-sponsored training the week of October 25, 2020. The Claimant did not report any wages or income for the week of October 25, 2020. Employer had work available for claimant the week of October 25, 2020 if claimant had not been attending training. Claimant remains employed by Commonwealth Electric Co.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able and available for work.

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. 871-24.23(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.

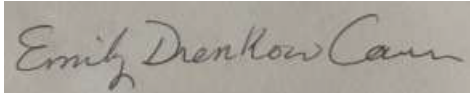
Due to his participation in the mandatory training agreed to by the employer and the claimant's representative, claimant was not available to work. The employer had work available that week but the claimant was in training through the union.

Claimant is in an apprenticeship program and understands that to be in the program he will need occasional time off work to attend required training. The program is part of the contract of hire negotiated through the claimant's union as his exclusive representative. Claimant submitted himself to the program by choosing to start work in the apprenticeship program, at which time he entered into an apprenticeship agreement. The employer has agreed to the training leave of absence, but without pay from the employer. If the leave is a known and agreed to term at the beginning of the term of employment, or indeed at the formation of the current contract of hire then it was negotiated with the consent of both the employer and the union (the employee's representative) and a voluntary period of employment.

During the week of October 25, 2020 claimant was on a negotiated voluntary leave of absence, and was not available to work. As such claimant is not eligible to receive benefits. The December 30, 2020 unemployment insurance decision is reversed.

DECISION:

The December 30, 2020, unemployment insurance decision is reversed. Claimant was on a voluntary leave of absence and was not available to work and as such is ineligible for benefits.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

March 15, 2021
Decision Dated and Mailed

Ed/lj

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <https://dhs.iowa.gov/node/3250>