

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW L KUEHL
Claimant

**BOWKER MECHANICAL
CONTRACTORS LLC**
Employer

APPEAL 19A-UI-05266-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Respondent (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

On July 1, 2019, Bowker Mechanical Contractors, LLC (employer) filed an appeal from the May 31, 2019, reference 04, unemployment insurance decision that allowed benefits based upon a temporary layoff. After due notice was issued, a telephone hearing was held on July 25, 2019. Matthew L. Kuehl (claimant) did not respond to the hearing notice and did not participate. The employer participated through CFO Kent Nanke. The Employer's Exhibit 1 and the Department's Exhibit D1 were admitted into the record.

ISSUES:

Is the employer's appeal timely?
Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work and available for work during the one week ending May 18, 2019?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an apprentice with the employer effective September 24, 2018. As part of being an apprentice, he is represented by a union and required to attend week-long classes on a regular basis. The claimant was required to attend training the week ending May 18, 2019. The employer granted the claimant's request to attend the training, even though it had work available for him.

The unemployment insurance decision was mailed to the employer's address of record on May 31, 2019. The employer did not receive the decision. The first notice of allowance of benefits was on June 27, when the employer contacted Iowa Workforce Development (IWD). The appeal was filed on July 1, within ten days after that communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is timely and the claimant is unavailable for work during the one week ending May 18, 2019.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed an appeal within a reasonable period of time after discovering the allowance of benefits. Therefore, the appeal shall be accepted as timely.

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)j(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(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.

The administrative law judge concludes the claimant was not available for work during the one week ending May 18, 2019. He attended training required for the apprenticeship program he signed up for with his local union. The employer agreed to allow the claimant to attend the training and employ the claimant during his participation in the program. However, the employer does not require the claimant to attend the training or participate in the program in order to maintain his employment. The period of training was a leave of absence negotiated with the consent of the employee and the employer. It is deemed a period of voluntary unemployment and claimant is ineligible for benefits during the one week ending May 18, 2019.

Alternatively, if the claimant's one week of training is not considered a voluntary leave of absence, he is still not eligible for benefits because he cannot establish he is able to and available for work that week.

While the claimant was totally unemployed during the one week ending May 18, 2019, he was not considered "temporarily unemployed" as defined by the statute below.

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.

In this case, the claimant was not off work because of a plant shutdown, vacation, inventory, or lack of work or other emergency. Therefore, the time off work to attend training does not meet the definition of “temporarily unemployed” and the claimant is not exempt from the requirement to be able to and available for work.

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

Availability disqualifications. The following are reasons for a claimant being disqualified for 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.

In this case, claimant was not able to and available for work as he was attending full-time training during the week in question.

In summary, the claimant has not established he was available to work during the one week ending May 18, 2019, as his burden, and therefore he is not eligible for benefits for that week.

DECISION:

The employer's appeal is timely. The May 31, 2019, reference 04, decision is reversed. The claimant is not eligible for benefits during the one week ending May 18, 2019, as he was not available for work.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn