

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BENJAMIN J SCOTT
Claimant

FRANK MILLARD & CO INC
Employer

APPEAL 19A-UI-03654-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/31/19
Claimant: Respondent (1)**

Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the April 24, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was unemployed due to a short-term layoff and was eligible for benefits. The parties were properly notified of the hearing. A telephonic hearing was held on June 11, 2019. The claimant, Benjamin J. Scott, participated in the hearing, along with witness Eric Meirhaeghe. Claimant was represented by John E. Remus, Attorney at Law. The employer, Frank Millard and Company, Inc., participated through witnesses Dianna McCannon, Payroll Manager; and Ryan Coffin, Supervisor of the Sheet Metal Division; and Carolyn Karettis of Employers Unity, L.L.C., represented the employer. Claimant's Exhibits A through I were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record. At the outset of the hearing, the parties waived notice on the issues of total unemployment and temporary unemployment under Iowa Code §§ 96.19(38)A and 96.19(38)C.

ISSUES:

Is the claimant totally unemployed?
Is the claimant partially unemployed?
Is the claimant temporarily unemployed?
Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time with Frank Millard and Company, Inc. as a sheet metal worker apprentice. Claimant began working for this employer on June 24, 2013. Claimant has been a member of the International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 91 ("Local 91") since September 30, 2013. Claimant is also an apprentice under the supervision of the Local 91 Joint Apprenticeship and Training Committee ("Local 91 JATC").

The JATC is comprised of six members, three of whom are selected by and represent management and three of whom are selected by and represent the laborers. The employer has one member who sits on the Local 91 JATC. The Local 91 JATC is responsible for regulating the apprenticeship program. The Local 91 JATC created and updates the Standards of Apprenticeship. (Exhibit C). These Standards of Apprenticeship are incorporated into the Local 91 collective bargaining agreement. (Exhibit C, Section XVIII)

The Standards of Apprenticeship provide that apprentices will receive supplemental classroom training to support and bolster the on-the-job training they get while working. (Exhibit C, Section XII) If an apprentice elects not to attend this classroom training, he or she will be expelled from the apprentice program. This classroom training benefits both the apprentice and the employer. The Local 91 JATC sets the classroom training schedule on an annual basis. (Exhibits E through I) These training schedules are posted on a bulletin board in the employer's shop office. Additionally, part of the agreement between the employer and Local 91 is that an individual enrolled in the apprenticeship program becomes indentured to the employer, in exchange for which the employer agrees to sponsor the apprentice.

As an apprentice, claimant attended periodic weeks of training throughout his employment with this employer. Claimant attended four weeks of training during his first year of the apprenticeship program and five weeks of training in each of the subsequent four years. Claimant would learn about the training initially through the training schedule distributed by the Local 91 JATC. He was also reminded by the shop foreman when he had training coming up.

Claimant attended a training the week of April 1, 2019. This training was located in Rock Island, Illinois. Claimant was not paid wages to attend this training. The employer would have had work available for claimant that week, had he not been assigned to attend training. If claimant elected to skip this training, he would have been expelled from the apprenticeship program. This would affect his regular wage increases, his health insurance, his pension, his access to the underemployment fund, and his ability to receive regular job training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was temporarily unemployed for the one-week period ending April 6, 2019. Benefits are allowed for that one-week period.

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".**

(Emphasis added.)

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.

In this case, the claimant did not work at all during the week ending April 6, 2019. Therefore, he was totally unemployed that week. The question then becomes whether claimant was off work due to a temporary layoff or on a voluntary leave of absence. A recent decision issued by the Employment Appeal Board in hearing number 19B-UI-00595, *Keiser v. RMB Company Inc*, is frequently cited by employers seeking relief from unemployment insurance benefits charges in cases similar to this. In *Keiser*, the EAB found that claimant's absence to attend union training was a voluntary leave of absence negotiated with the consent of both parties. In order to support the finding that the training was a voluntary leave of absence, the EAB pointed to the fact that the training was not required in order for claimant to remain employed.

The circumstances in this case can be differentiated from *Keiser* in that claimant would be separated from employment as an apprentice if he did not attend the union training. Even if the employer had work available for claimant as a tradesperson, the evidence shows this position was compensated at a lower rate and with fewer benefits, and it was not the same as claimant's apprentice position. Had claimant been separated from employment, benefits would likely be denied, as claimant would have failed to maintain his union status as a condition of employment. This can be compared to a requirement many employers have that employees maintain specific licensing to remain employed. In those cases, the courts have consistently held that failing to meet those requirements can be considered job-related misconduct. *Cook v. Iowa Department of Job Services*, 299 N.W.2d 698 (Iowa 1980), *Galey v. Employment Appeal Bd.*, No. 17-0976 (Iowa Ct. App. July 18, 2019).

Because the training was a mandatory condition of continued employment that took claimant away from his regular paid job duties, it cannot be considered a voluntary leave of absence. Rather, claimant's temporary separation was the result of the employer's decision not to provide him with work for the week of March 31 through April 6, 2019, to attend training sponsored by the union as part of the employer's agreement with the union. Because the training was mandatory in order to maintain employment as an apprentice for this employer, claimant was not on a temporary leave of absence, but was temporarily laid off due to a lack of work. While the employer may contend that there was work available for claimant that week, the administrative law judge finds that claimant was assigned and required to attend training for that week. Therefore, there was no work available for him. The administrative law judge finds that claimant was temporarily unemployed that week.

Because claimant was temporarily unemployed, under Iowa Code § 96.4(3) he was not required to be able to and available for work during the one-week period ending April 6, 2019.

DECISION:

The April 24, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was temporarily unemployed during the one week ending April 6, 2019. Benefits are allowed for that one-week period, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn