

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS C PARKER
Claimant

APPEAL 21A-UI-05164-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR VALLEY STEEL INC
Employer

OC: 06/14/20
Claimant: Appellant (4-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment

STATEMENT OF THE CASE:

On February 12, 2021, Thomas C. Parker (claimant) filed an appeal from the February 9, 2021, reference 04, unemployment insurance decision that denied benefits effective December 27, 2020, based upon the determination he was still employed in the same manner as his contract of hire and he was not able to and available for work. After due notice was issued, a telephone hearing was held on April 20, 2021. The claimant participated. The employer did not respond to the hearing notice and did not participate. No exhibits were offered into the record. The administrative law judge took official notice of the administrative record, specifically the weekly claims recorded in the claimant information database (CID).

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Was the claimant able to work, available for work, and actively and earnestly seeking work effective December 20, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on November 3, 2020, as an Iron Apprentice. He reactivated his claim for unemployment insurance benefits effective December 20, and the weekly benefit amount is \$412.00. The claimant worked his regular full-time hours, earning more than \$427.00 in gross wages, for the three weeks ending January 9, 2021.

The claimant was in apprenticeship training from January 10 through January 16. He was in class for forty hours and was unable to file his claim, so his fiancé filed it for him. The employer agreed to let the claimant have the time off to attend the training; however, the employer continued work and did not shut down during that time.

The employer laid the claimant off effective January 17. He did not work and earn wages for the two weeks ending January 30, but he remained in contact with his union hall. The claimant worked the week of February 6 and reported \$490.00 in wages earned. He did not work or earn wages from February 7 through February 20.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed under Iowa law or able to work and available for work from December 20, 2020, through January 16, 2021, and the week ending February 6, 2021. Benefits are denied. The claimant was temporarily laid off and eligible for benefits for the two weeks between January 17 and January 30, 2021, and the two weeks between February 7 and February 20, 2021. Benefits during that time are allowed.

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 Code § 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 Admin. Code r. 871-24.22(2)j 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 provides, in relevant part:

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.

...

(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.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when someone has received no wages and performed no services during any given week. *Id.* Partial unemployment occurs when the claimant works reduced hours and earns less than their weekly benefit plus fifteen dollars. In this case, the claimant worked and earned gross wages in excess of \$427 from December 20, 2020 through January 9, 2021, and the week ending February 6. He is not eligible for benefits during those weeks.

The week ending January 16, the claimant did not work and earn wages, but he was not temporarily unemployed because the employer had work available. Therefore, he must be able to and available for work to be eligible for benefits. 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. In the alternative, the claimant was not available for work because he was in school. Benefits are denied.

The claimant was temporarily laid off due to a lack of work from January 17 through January 30, and February 7 through February 20, 2021. Accordingly, benefits are allowed for those four weeks.

DECISION:

The February 9, 2021, reference 04, unemployment insurance decision is modified in favor of the appellant. The claimant is not unemployed or able to and available for work from December 20, 2020 through January 16, 2021 and during the week ending February 6, 2021. Benefits are denied. The claimant was temporarily unemployed due to a lack of work from January 17 through January 30, and February 7 through February 20, 2021. Benefits are allowed.

REMAND:

Whether the claimant has an overpayment during the week ending December 26 as a result of this decision that must be established before additional benefits can be released is remanded to the Benefits Bureau for review and processing.



Stephanie R. Callahan
Administrative Law Judge

April 28, 2021
Decision Dated and Mailed

src/scn