

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JASON LAMPORTE**  
Claimant

**APPEAL NO. 22A-UI-01914-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIEMENS WIND POWER INC**  
Employer

**OC: 11/21/21  
Claimant: Appellant (4)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.1A(37) – Temporary and Partial Unemployment  
Iowa Code Section 96.7(2)(a)(2) – Employer Liability

**STATEMENT OF THE CASE:**

The claimant, Jason Lamporte, filed a timely appeal from the December 13, 2021, reference 01, decision that denied benefits effective November 21, 2021, based on the deputy's conclusion that the claimant was still employed under the same hours and wages and, therefore, was not partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on February 11, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A., and Equifax correspondence dated December 20, 2021.

**ISSUES:**

Whether the claimant was able to work and available for work during the period of November 21, 2021 through January 1, 2022.  
Whether the claimant was partially and/or temporarily unemployed during the period of November 21, 2021 through January 1, 2022.  
Whether the employer's account may be charged for benefits for the period of November 21, 2021 through January 1, 2022.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Jason Lamporte is employed by Siemens Wind Power, Inc. as a full-time crane operator in training. The claimant has been with the employer since February 2019. The claimant has held multiple full-time positions with the employer. The claimant started the crane operator training in November 2021. The claimant's work hours while in training are 6:40 a.m. to 2:25 p.m., Monday through Friday. The claimant's work hours when not in training have been 2:50 p.m. to 11:25 p.m., Monday through Fridays. The claimant was also required to work Saturday overtime hours as needed. The claimant estimates his hourly wage at between \$21.95 and \$22.05. The claimant's hourly wage has not decreased.

The claimant established an original claim for benefits that was effective November 21, 2021 and did so in anticipation of a temporary furlough. Iowa Workforce Development set the claimant's weekly benefit amount at \$571.00. The claimant made weekly claims for the six week between November 21, 2021 and January 1, 2022.

During the week of November 21-27, 2021, the claimant worked 20 hours, for which he earned his usual wage. The employer also provided holiday pay for the Thanksgiving holiday and the Friday after Thanksgiving. The claimant's combined pay for the week was about \$920.00.

During the week that ended December 4, 2021, the claimant was temporarily furloughed without pay in connection with the employer's lack of parts necessary for production. The claimant was ready, willing and able to report to work that week.

During the week that ended December 11, 2021, the claimant worked his usual full-time hours and received his full-time pay, about \$920.00.

During the week of December 12-18, 2021, the claimant worked Monday and Tuesday, but was furloughed with pay for the remaining three days of that week. For the three days when there was no work for the claimant, the employer paid the claimant holiday pay that would otherwise have been paid in connection with the Christmas and New Year's holidays. The claimant's combined pay for that week was about \$920.00.

During the weeks that ended December 25, 2021 and January 1, 2022, the claimant was temporarily furloughed without pay. The claimant was ready, willing and able to report to work those weeks.

The claimant returned to the full-time employment effective Monday, January 3, 2022. The claimant discontinued his unemployment claim in connection with the recall to the full-time employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

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) 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.

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.

Iowa Code section 96.1A(37) 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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

During the weeks that ended November 27, December 11, and December 18, 2021, the claimant received full-time wages and therefore cannot be deemed totally, temporarily or partially unemployed. The claimant is not eligible for unemployment insurance benefits for those three weeks.

During the weeks that ended December 4 and December 25, 2021, as well as the week that ended January 1, 2022, the claimant was able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for those three weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for those three weeks.

**DECISION:**

The December 13, 2021, reference 01, decision is modified in favor of the claimant/appellant as follows.

During the weeks that ended November 27, December 11, and December 18, 2021, the claimant received full-time wages, was not totally, temporarily or partially unemployed, and was not eligible for unemployment insurance benefits.

During the weeks that ended December 4 and December 25, 2021, as well as the week that ended January 1, 2022, the claimant was able to work, available for work, but temporarily laid off. The claimant is eligible for benefits for those three weeks, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for those three weeks.



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James E. Timberland  
Administrative Law Judge

March 3, 2022  
Decision Dated and Mailed

jet/scn