

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRAD WILDIN

Claimant

APPEAL 21A-UI-17660-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLT PLUMBING AND HEATING INC

Employer

OC: 05/16/21

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.1A(37) – 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 August 9, 2021, the claimant filed an appeal from the February 16, 2021, (reference 02) unemployment insurance decision that denied benefits based upon claimant's unavailability for work. The parties were properly notified about the hearing. A telephone hearing was held on October 4, 2021. Claimant participated. Employer did not register for the hearing and did not participate. Exhibit A was received into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to work and available for work during effective May 16, 2021?

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 with Holt Plumbing and Heating Inc. as an apprentice HVAC technician. He began his employment in June 2016. His rate of pay is \$25.00 per hour.

As part of the apprenticeship, the claimant was required to go to a class conducted by the Plumbing, Heating, and Cooling Contractors of Iowa periodically in Cedar Rapids, Iowa. He attended these classes from 7:00 a.m. to 4:30 p.m. If the claimant did not go to these classes, then he would not be allowed to continue on as an apprentice.

The claimant attended apprenticeship training on a full-time basis during business hours from May 19, 2021 through May 26, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is unavailable effective May 16, 2021.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 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.

In this case, 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 claimant is not exempt from the requirement to be able to and available for work.

Iowa Admin. Code r. 871-24.23(5) and (10) provide:

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.

(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.

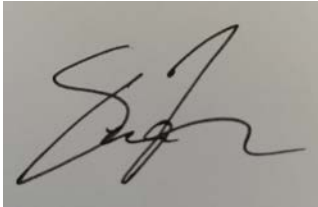
The administrative law judge concludes claimant was not available for work during the weeks ending May 22, 2021 and May 28, 2021. As part of the apprenticeship program, he is required to attend classes periodically. The claimant was aware of this condition when he was hired as an apprentice. During those weeks in which he attends class, the employer does have work available, but the claimant is not available for that work because he must attend classes as part of his apprenticeship. This fact makes him ineligible for benefits under Iowa Admin. Code r. 871-24.23(5).

While the administrative law judge hears the claimant's difficulty in paying for books and being without remuneration for this period, the unemployment laws are not designed to address these

deficiencies. Unemployment laws are designed to pay claimants when they are able and available for work, but work is not available for them.

DECISION:

The February 16, (reference 02) decision is affirmed. The claimant is not eligible for benefits during the weeks ending May 22, 2021 and May 28, 2021, as he was unavailable for work. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

October 18, 2021
Decision Dated and Mailed

smn/scn