

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHNATHON R ALEXANDER**  
Claimant

**APPEAL 21R-UI-12142-AW-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMONWEALTH ELECTRIC CO OF THE  
MIDWEST**  
Employer

**OC: 11/10/19  
Claimant: Respondent (2)**

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Iowa Code § 96.1A(37) – Definitions – Total, partial unemployment  
Iowa Code § 96.4(3) – Eligibility – A&A – Able to, available for, work search  
Iowa Code § 96.7(2)A(2) – Charges – Same base period employment  
Iowa Admin. Code r. 871-24.23(26) – Eligibility – A&A – Part-time same hours, wages  
Iowa Admin. Code r. 871-24.23(10) – Eligibility – A&A – Leave of Absence

**STATEMENT OF THE CASE:**

Employer filed an appeal from the January 5, 2021 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was scheduled for March 17, 2021. No hearing was held because appellant was not available at the registered telephone number at the time of the hearing. On March 18, 2021, a default decision was issued dismissing the appeal.

On March 26, 2021, employer appealed to the Employment Appeal Board (EAB). On May 4, 2021, the EAB remanded this matter to the Appeals Bureau for a hearing on the merits. Upon remand, due notice was issued and a hearing was held on July 27, 2021 at 8:00 a.m. Claimant did not participate. Employer participated through Kelsey Drexel, Payroll Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant is totally, partially or temporarily unemployed.  
Whether claimant is able to and available for work.  
Whether claimant is on an approved leave of absence.  
Whether claimant is still employed at the same hours and wages.  
Whether employer's account is subject to charge.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed with Commonwealth Electric Company of the Midwest as an Apprentice Electrician. Claimant is in the apprenticeship program through a union. The union requires claimant to attend week-long training classes several times throughout the year. Claimant requests time off from work to attend the classes. Employer approves claimant's requests.

Claimant requested the week of November 1, 2020 through November 7, 2020 off from work to attend a class. Employer approved claimant's request for a temporary leave of absence. Employer had work available for claimant if he had not attended the class.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant is unavailable for work effective November 1, 2020. Benefits are denied.

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.

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)(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.

Claimant was not off of work because of a plant shutdown, vacation, inventory or lack of work or other emergency. Therefore, claimant's time off to attend training does not meet the definition of "temporarily unemployed" and claimant is not exempt from the requirement that he be able to and available for work.

Claimant was not available for work because he was on a leave of absence to attend class. Claimant has not met his burden of proving that he was available for work. Therefore, benefits are denied.

**DECISION:**

The January 5, 2021 (reference 03) unemployment insurance decision is reversed. Claimant was totally unemployed and not able to and available for work from November 1, 2020 through November 7, 2020. Benefits are denied effective November 1, 2020.



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August 2, 2021  
Decision Dated and Mailed

acw/scn