

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH E DAVIS
Claimant

MODERN PIPING INC
Employer

APPEAL 19R-UI-09766-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.19(38) – Total, Partial Unemployment

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 18, 2019 (reference 01) unemployment insurance decision that found he was not eligible for unemployment benefits from September 22, 2019 through September 28, 2019 because he did not work for the major portion of his scheduled workweek with his regular employer. The parties were properly notified of the hearing. A telephone hearing was held on November 7, 2019. The claimant, Joseph E. Davis, participated personally. The employer, Modern Piping Inc., registered a telephone number to be contacted for the hearing but did not answer when the administrative law judge telephoned the employer's witness. The administrative law judge took official notice of the claimant's unemployment insurance benefits records and conducted the hearing.

On November 15, 2019, an Administrative Law Judge Decision was issued which reversed the October 18, 2019 (reference 01) decision and found the claimant was eligible for benefits for the one-week benefit period ending September 28, 2019. The employer filed an appeal of the November 15, 2019 Administrative Law Judge Decision to the Employment Appeal Board.

The Employment Appeal Board issued a decision on December 9, 2019 remanding the case for another hearing. Due notice was issued and another hearing was scheduled for January 8, 2020. Both parties registered telephone numbers to be contacted at for the hearing. The claimant, Joseph E. Davis, participated personally at the beginning of the hearing. The employer, Modern Piping, Inc., registered witness Lisa Hadenfeldt to participate in the hearing but she did not answer at the telephone number she registered when the Administrative Law Judge telephoned her at the beginning of the hearing.

During the claimant's testimony, Ms. Hadenfeldt contacted the Appeals Bureau to indicate she wished to participate in the hearing. The administrative law judge again contacted Ms. Hadenfeldt for the hearing. After Ms. Hadenfeldt joined the hearing, the claimant's telephone line disconnected. The administrative law judge attempted to contact the claimant again on two further occasions for his continued participation in the hearing. The claimant was not available and the administrative law judge was unable to leave a voicemail message in the claimant's mailbox. The administrative law judge took official notice of the claimant's

unemployment insurance benefits records and the testimony provided during the original November 7, 2019 hearing. Neither party offered exhibits into the record.

ISSUES:

Was the claimant totally or partially unemployed from September 22, 2019 through September 28, 2019?

Was the claimant able to work and available for work effective September 22, 2019 through September 28, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time pipefitter for this employer. He began working for this employer on May 6, 2016. He typically works 40 hours or more per week. Claimant travels to various job sites to complete his work or is assigned to work in the fabrication shop.

Claimant has been a member of the Local 125 Plumbers and Pipefitters Union since May 6, 2016. Claimant is enrolled in the pipefitter apprenticeship program with this union. Claimant is required to be in the union by this employer in order to continue working as a full-time pipefitter. As part of his requirement to be in the union, claimant must attend 6-7 week-long classes or training sessions each year. These week-long training sessions are related to his work as a pipefitter. The union decides the dates and times of the trainings. Claimant is informed about the trainings from the union. The employer is informed about the trainings when the training schedule is set at the beginning of the year.

The employer and the Local 125 Plumbers and Pipefitters Union have a collective bargaining agreement in place. The current agreement began in May of 2017 and runs through April 30, 2021. The collective bargaining agreement recognizes the week-long apprenticeship trainings and it states that those periods of time are unpaid. Under the agreement, the claimant is not allowed to work for the employer during the week-long training periods. Claimant was informed by union representatives upon hire that he would receive unemployment benefits for the weeks that he was required to be in training. Prior to January 1, 2019, the employer did not protest payment of unemployment insurance benefits to the claimant when he was filing for benefits during the week-long training sessions. After January 1, 2019, the employer began protesting payment of unemployment insurance benefits to the claimant when he was filing for benefits during the week-long training sessions. The parties did not renegotiate the terms of the collective bargaining agreement in January of 2019.

Claimant did not work the week of September 22, 2019 through September 28, 2019 and did not earn any wages, holiday pay, vacation pay, or pension pay. The claimant attended the union training sessions each day of the week from September 22, 2019 through September 28, 2019. The training sessions were held Monday through Friday from approximately 8:00 a.m. to 5:00 p.m. each day. The employer did not schedule the claimant to work the week of September 22, 2019 through September 28, 2019 because it was aware that the union training sessions were occurring. The claimant was not unemployed that week due to a plant shutdown, vacation, inventory, lack of work or emergency from his regular job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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".

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.

The claimant did not work or earn wages during the week ending September 28, 2019. Therefore, he was not partially unemployed that week.

In order for the claimant to be considered temporarily unemployed, he must be 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. Iowa Code § 96.19(38)c. If he was considered temporarily unemployed, the requirements to be able to work, available to work and actively seeking work would be waived. Iowa Code § 96.4(3).

The claimant was not unemployed from September 22, 2019 through September 28, 2019 due to a plant shutdown, vacation, inventory, lack of work or emergency. He was not at work that week because he was required to attend the mandatory union apprenticeship training sessions.

As such, while he was totally unemployed, he was not temporarily unemployed and the requirements under Iowa Code § 96.4(3) are not waived.

Iowa Admin. Code r. 871-24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

Because the claimant was attending the mandatory union apprenticeship training sessions September 22, 2019 through September 28, 2019, he was not available for work at his regular full-time employer. As such, benefits are denied for that one-week period due to his unavailability.

DECISION:

The October 18, 2019 (reference 01) unemployment insurance decision that the claimant was not eligible for benefits from September 22, 2019 through September 28, 2019 is affirmed. The Administrative Law Judge Decision issued on November 15, 2019 is hereby vacated. The claimant was not available for work, as required, and benefits are denied for September 22, 2019 through September 28, 2019 due to claimant's unavailability.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn