

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACK R CARPENTER
Claimant

APPEAL NO. 21A-UI-09559-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WALDINGER CORPORATION
Employer

OC: 08/09/20
Claimant: Respondent (2)

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.19(38) – Total and Partial Unemployment

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 26, 2021 reference 03, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on June 21, 2021. Employer participated by Joe Porepp. Claimant failed to respond to the hearing notice and did not participate.

ISSUE:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant is totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer as an apprentice electrician. Claimant was hired through the local union, and the union requires claimant to take ongoing classes towards receiving journeyman certification. Claimant has attended those classes at various times and employer allows claimant to miss work to attend the classes. Employer stated that claimant could still have a job without attending the classes, but claimant would not be able to continue with his union apprenticeship.

REASONING AND CONCLUSIONS OF LAW:

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.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Claimant in this matter takes a leave of absence for a number of weeks a year such that he can attend classes necessary for him to get a journeyman certification. Benefits are withheld for the week ending February 6, 2021.

DECISION:

The decision of the representative dated March 26, 2021, reference 03, is reversed. Claimant is not eligible to receive unemployment insurance benefits, effective January 31- February 6, 2021 as he is not able and available for work.



Blair A. Bennett
Administrative Law Judge

July 2, 2021
Decision Dated and Mailed

bab/mh