

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIAN ENGLISH
Claimant

LENNOX INDUSTRIES INC
Employer

APPEAL 18A-UI-10159-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/29/18
Claimant: Respondent (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Employer filed a timely appeal from the September 28, 2018, (reference 02) decision that allowed benefits beginning on July 29, 2018 finding the claimant was on a short term layoff. After due notice was issued, a hearing was held by telephone conference call on October 24, 2018. Claimant did not participate. Employer participated through Brent McDowell, Labor Relations Coordinator and was represented by Kii Elliott of ADP, LLC Tax UCM Services.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Unfortunately on July 19, a tornado severely damaged the Lennox plant in Marshalltown, Iowa. Due to the damage, there was no work for the claimant effective July 19. All employees were paid regular wages through July 29, 2018. The claimant filed a claim for benefits with an effective date of July 29, 2018. He claimed and received unemployment insurance benefits through the three-week period ending August 18, 2018.

On August 17, 2018, the claimant was called back to work. Under the employer's collective bargaining agreement, (CBA) an employee recalled to work may opt not to return for two weeks once recalled. The claimant opted not to return to work on August 17, but instead opted to return to work on August 31.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work effective August 17, 2018.

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. 871-24.23(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.

The employer asked the claimant to return to work at his regular hours and shift beginning on August 17, 2018. While the CBA may allow claimant to put off a return to work for two weeks after a layoff, the CBA does not supersede Iowa law. Since the claimant chose not to work for two-weeks when work was available for him, he is not considered able to and available for work effective August 17, 2018. The claimant did not claim benefits after August 17, thus, there is no overpayment, but benefits are denied effective August 17, 2018.

DECISION:

The September 28, 2018, (reference 02) decision is modified in favor of the appellant. The claimant is not able to and available for work effective August 17, 2018. Benefits are denied thereafter.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs