

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OLEKSANDR SHEREMET
Claimant

APPEAL 20A-UI-00659-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANK MILLARD & CO INC
Employer

**OC: 12/08/19
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – 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:

The employer/appellant filed an appeal from the January 13, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 6, 2020. Claimant participated personally and with the assistance of a Russian interpreter from CTS Language Link. The employer was represented by Beverly Maez, hearing representative with Employer's Unity LLC. Dianna McCannon, payroll manager, testified for the employer. The administrative law judge took official notice of the administrative records. Employer Exhibits 1-11 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work and available for work during the one week ending December 14, 2019?
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: Claimant is employed full-time with Modern Piping as an apprentice plumber. He began his employment in 2015.

Claimant is a member of the Local 125 union. Local 125 offers its members the opportunity to participate in an apprenticeship program. The apprenticeship program operates under the supervision of the Joint Apprenticeship and Training Committee ("JATC"). The JATC is responsible for regulating the apprenticeship program. Claimant entered into the apprenticeship after being hired by the employer as a helper.

The duties of apprentices include attending regularly and completing satisfactorily the required hours of instruction in subjects related to the trade. The classroom training benefits both the

apprentice and the employer. If an apprentice elects not to attend this classroom training, he or she will eventually be no longer able to work for employer as a union employee. However, claimant could maintain his employment with this employer as a non-union employee although his rate of pay and benefits would likely be reduced. Claimant disputes whether or not he could be a helper if he left the apprenticeship program.

The Local 125 makes claimant and employer aware of the training dates. Employer is aware claimant will attend the training and allows him to do so. Claimant can receive a stipend from the union for attending the training under certain circumstances.

Claimant attended apprenticeship training on a full-time basis during business hours during the one week ending December 14, 2019. He resumed full-time work the following week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is unavailable for work during the one week ending December 14, 2019.

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.

The administrative law judge concludes claimant was not available for work during the one week ending December 14, 2019. Claimant attended training required for the apprenticeship program he signed up for with his local union. Employer agreed to allow claimant to attend the training and employ claimant during his participation in the program. However, the employer does not require claimant to attend the training or participate in the program in order to maintain his employment. The period of training was a leave of absence negotiated with the consent of the employee and the employer. It is deemed a period of voluntary unemployment and claimant is ineligible for benefits during the one week ending December 14, 2019.

Alternatively, if claimant's one week of training is not considered a voluntary leave of absence, claimant is not eligible for benefits because he cannot establish he is able to and available for work that week.

While claimant was totally unemployed during the one week ending December 14, 2019, he was not considered "temporarily unemployed" as defined by the statute below.

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.

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) provides:

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.

In this case, claimant was not able to and available for work as he was attending full-time training during the week in question.

In summary, claimant has not established he was available to work during the one week ending December 14, 2019, as his burden, and therefore he is not eligible for benefits for that week.

The issue of whether the claimant has been overpaid benefits remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The January 13, 2020, (reference 01) decision is reversed. The claimant is not eligible for benefits during the one week ending December 14, 2019, as he was not available for work.

REMAND: The issue of whether the claimant has been overpaid benefits remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn