

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL J STONGER
Claimant

FRANK MILLARD & CO INC
Employer

APPEAL 19A-UI-05919-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/28/18
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions
Iowa Code §96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

On July 25, 2019, the employer filed an appeal from the July 15, 2019, (reference 06) unemployment insurance decision that allowed benefits based upon a determination that claimant was eligible for benefits due to a short-term layoff. The parties were properly notified of the hearing. A telephonic hearing was held on August 16, 2019. The claimant, Michael Stonger, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Frank Millard & Company, Inc., participated through witness Diana McCannon, Payroll Manager; and Todd Richardson of Employers Unity represented the employer. Employer's Exhibits 1 through 31 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on June 20, 2017. He is currently employed full-time with the employer as a sheet metal apprentice at 60%. Claimant is still employed with this employer.

During the week ending June 22, 2019, claimant was off work to attend training with his union. The employer does not mandate that claimant attend the training. However, the union mandates the training and the employer mandates that claimant belong to the union as a condition of employment. Claimant did not receive any compensation during the week that he attended training. It was not possible for claimant to both attend the training and work during that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work during the week ending June 22, 2019. Benefits are allowed.

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.

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".**

(Emphasis added.)

Iowa Admin. Code r. 871-24.22(2)j(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.

In this case, the claimant did not work at all during the week ending March 30, 2019. Therefore, he was totally unemployed that week. The question then becomes whether claimant was off work due to a temporary layoff or on a voluntary leave of absence. The employer referenced a decision issued by the Employment Appeal Board in hearing number 19B-UI-00595, *Keiser v. RMB Company Inc.* In that decision the board found that claimant's absence to attend union training was a voluntary leave of absence negotiated with the consent of both parties. In order to support the finding that the training was a voluntary leave of absence, the EAB pointed to the fact that the training was not required in order for claimant to remain employed.

The circumstances in this case can be differentiated from *Keiser* in that claimant would be separated from employment if he did not attend the union training. Had claimant been separated from employment, benefits would likely be denied, as claimant would have failed to maintain his union status as a condition of employment. This can be compared to a requirement many employers have that employees maintain specific licensing to remain employed. In those cases, the courts have consistently held that failing to meet those requirements can be considered job-related misconduct. *Cook v. Iowa Department of Job*

Services, 299 N.W.2d 698 (Iowa 1980), *Galey v. Employment Appeal Bd.*, No. 17-0976 (Iowa Ct. App. July 18, 2019).

Because the training was a mandatory condition of continued employment that took claimant away from his regular paid job duties, it cannot be considered a voluntary leave of absence. Rather, claimant's temporary separation was the result of the employer's decision not to provide him with work for the week of June 16 through 22, 2019, to attend training sponsored by the union as part of the employer's agreement with the union. Because the training was mandatory in order to maintain employment, claimant was not on a temporary leave of absence, but was temporarily laid off due to a lack of work.

DECISION:

The July 15, 2019, (reference 06) unemployment insurance decision is affirmed. Claimant was unemployed during the one week ending June 22, 2019, and he is eligible for benefits. Benefits are allowed for that one-week period.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn