

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CURTIS D CORWIN

Claimant

and

LENNOX INDUSTRIES INC

Employer

HEARING NUMBER: 18BUI-10160

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was scheduled for October 24, 2018 in which the issues to be determined were whether the claimant was able to and available for work; eligible to receive partial benefits; still employed at the same hours and wages; and whether the employer's account be relieved or charges.

The hearing was held and the Board adopts and incorporates as its own the administrative law judge's Findings of Fact with the following comments:

The parties agreed the Claimant was laid off beginning July 19, 2018 through September 4, 2018 when the Employer contacted the Claimant to return on Thursday, September 6, 2018. The Claimant was available for work on September 4th and 5th before he went on vacation the following week, and of which he filed no claim.

The administrative law judge's decision was issued October 26, 2018, which modified the claims deputy's decision in favor of the appellant. The decision found the Claimant was not able to and available for work effective September 6, 2018 and denied benefits thereafter. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2015) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall

review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

871 IAC 24.22(2) provides:

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.

....

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. As the Iowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise.

The record is void of evidence as to what is considered the Claimant's regular workweek. The Employer's request that he return to work beginning September 6th, was at the end of the week. Does that mean the Claimant's workweek began on Thursday, as opposed to Monday (September 3rd, which was a holiday)? If not, then all the law requires is that the Claimant be able and available for the majority of his regular workweek. September 3rd was a holiday, and it has already been determined the Claimant was able and available for September 4th and 5th. If that constitutes the majority of his workweek, then he may be considered able and available for the entire week, and potentially eligible for benefits, according to the aforementioned rule.

Since there was no testimony elicited about the Claimant's regular workweek, then we must remand this matter for the limited purpose of obtaining additional testimony to determine the same. Should it be determined the Claimant was able and available for the major portion of his workweek, then he may be considered available for the entire week and not owe an overpayment. (Ref. 04, which is currently on appeal to the Appeals Section of Iowa Workforce Development.)

DECISION:

The decision of the administrative law judge dated October 26, 2018 is not vacated and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall

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conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/fnv