

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL S ESSEX
Claimant

MODERN PIPING INC
Employer

APPEAL 19A-UI-08531-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/19
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

On October 28, 2019, the claimant filed an appeal from the October 21, 2019, (reference 04) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2019. Claimant participated. Employer participated through human resources coordinator Lisa Hadenfeldt. Claimant's Exhibit A was received.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work and available for work from October 6, 2019 through October 19, 2019?
Is the claimant still employed at the same hours and wages?
Is employer's account subject to charge?

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 heating and air conditioning technician. He began his employment on December 6, 2015.

Claimant attended apprenticeship training on a full-time basis during business hours during the one week ending October 5, 2019. Iowa Workforce Development's reference 03 decision addresses whether claimant is eligible for benefits during that week.

Claimant returned to work on a full-time basis on October 6, 2019. Claimant was then temporarily laid off during the one week ending October 26, 2019. Iowa Workforce Development's reference 05 decision allowed benefits that week. Employer has not appealed that decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is unavailable for work from October 6, 2019, through 19, 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 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 Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

In this case, claimant is not considered able to and available for work or eligible for benefits from October 6, 2019, through October 19, 2019, because he was working on a full-time basis.

The issue of whether employer's account will be charged is moot and will not be discussed further, as claimant is not allowed benefits during that time period.

This decision does not affect claimant's eligibility for benefits during the week of October 26, 2019, or thereafter.

DECISION:

The October 21, 2019, (reference 04) decision is affirmed. The claimant is not eligible for benefits from October 6, 2019, through October 19, 2019, as he was fully employed during that time period.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn