

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TYLER L GRAHAM**  
Claimant

**APPEAL NO. 21A-UI-09557-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE WALDINGER CORPORATION**  
Employer

**OC: 09/27/20**  
**Claimant: Appellant (2)**

Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.19(38) – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 26, 2021 reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on June 21, 2021. Claimant participated personally. Employer participated by Joe Porepp.

**ISSUE:**

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Is the claimant totally, partially, or temporarily unemployed?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer as an electrical apprentice on July 1, 2017. At the time of hire, claimant and employer entered in to an agreement that claimant would occasionally miss weeks of work in order that claimant could attend classes required by the local union in order for claimant to eventually gain a journeyman's certification.

Claimant did not work for employer on the week ending February 6, 2021 as he was attending classes required by the local union. Employer stated that claimant was not penalized for missing work as employer had an agreement with the union that apprentices would not be penalized for time missed for classes.

Claimant stated that he was not able and available for work for the week missed as he was attending the classes.

Employer stated that it is the union and not employer requiring the classes, and employer could still have a non-union job if he chose to not attend the classes.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant has not established the ability to work for the week ending February 6, 2021. Claimant and employer entered in to an agreement – also involving third party local union – that allows claimant to have temporary leaves of absence for claimant to attend these classes. Benefits are withheld for the week ending February 6, 2021.

**DECISION:**

The decision of the representative dated March 26, 2021, reference 02 is reversed. Claimant is not eligible to receive unemployment insurance benefits for the week ending February 6, 2021.



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Blair A. Bennett  
Administrative Law Judge

July 2, 2021  
Decision Dated and Mailed

bab/mh