

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LYDIA N PITMAN
Claimant

VISION ELECTRIC LLC
Employer

APPEAL 24A-UI-02663-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/18/24
Claimant: Respondent (3)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.1A (37) – Partial and Temporary Unemployment

STATEMENT OF THE CASE:

The employer, Vision Electric LLC, filed an appeal from the March 4, 2024, (reference 01) unemployment insurance decision that found the claimant was not eligible for benefits effective February 18, 2024, because she was employed with this employer for the same hours and same wages as her original contract of hire. After due notice, a telephone hearing was held on April 2, 2024. The claimant, Lydia Pitman, participated personally. The employer participated through Human Resources, Payroll, and Recruiting Representative Samantha Steiner. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant was able to and available for work.
Whether the claimant was totally, partially or temporarily unemployed.
Whether the employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed as a full-time electrical apprentice with Vision Electric LLC. The claimant began her employment on September 26, 2022. When the claimant was hired, she enrolled in an apprenticeship program with Associated Builders & Contractors of Iowa (ABC). The claimant must be an apprentice in order to advance with the employer. The claimant usually works eight hours per day Monday through Friday.

To remain in good standing in the apprenticeship program, the claimant must attend weeklong classroom training several times throughout the year. During the week of February 18, 2024, the claimant participated in employer-sponsored and employer-required apprentice training through ABC. ABC sets the training schedule. The employer had several employees participate in the training during the week of February 18, 2024. In anticipation of the training, the employer did not schedule other work for the claimant during the week of February 18, 2024. The claimant participated in the week-long apprentice training as directed by the employer.

The claimant filed an original claim for unemployment insurance benefits with an effective date of February 18, 2024. However, the claimant did not make a weekly claim for benefits for the week ending February 24, 2024.

The employer advises that the employer erroneously protested the claim for benefits and does not wish to challenge the claim for benefits. Rather, the employer desired that unemployment benefits be paid to the claimant for the week in question.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 96.1(A)(37) 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(5), (10), and (29) provide:

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.

...

(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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No benefit payment shall be allowed until the individual claiming benefits has completed a continued claim online or as otherwise directed by the department.

The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and not later than close of business on the Friday following the weekly reporting period.

(2) An individual claiming benefits using the weekly continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

(3) The individual shall set forth the following:

1. That the individual continues the claim for benefits;

2. That except as otherwise indicated, during the period covered by the claim, the individual was fully or partially unemployed, earned no gross wages and received no benefits, was able to work and available for work;

3. That the individual indicates the number of employers contacted for work, the contact information for each employer contacted, and the result of the contact;
4. That the individual knows the law provides penalties for false statements in connection with the claim;
5. That the individual has reported any job offer received during the period covered by the claim;
6. That the individual understands the individual's responsibility to review the individual's claim records to ensure there is no delay in filing the individual's weekly claim to remain in continuous reporting status. Failure to file claims each week will require a claimant to submit a claim application to reactivate the claim;
7. Other information required by the department.

(emphasis added).

The weight of the evidence establishes that the claimant was able to work, available for work, but temporarily laid off during the week that ended February 24, 2024. The claimant did not request a leave of absence. During that week, the employer did not make the claimant's regular work available. Instead, the employer directed the claimant to report for apprentice training that the employer required as a condition of the employment. However, the claimant failed to file a weekly-continued claim for benefits for the week ending February 24, 2024. Typically, a claimant must file weekly-continued claims in order to be paid benefits. Because there is no weekly-continued claim filed for the period of February 18, 2024, through February 24, 2024, the claimant cannot be paid for benefits for that week.

DECISION:

The March 4, 2024 (reference 01) unemployment insurance decision is modified in favor of the respondent. The claimant was able to work, available for work, but was temporarily laid off during the week that ended February 24, 2024. The availability disqualification shall not continue. However, the claimant did not file a weekly claim for the week that ended February 24, 2024 and, therefore, cannot be considered for benefits for that week. As such, the claimant is not eligible for benefits for the period of February 18, 2024, through February 24, 2024.



Patrick B. Thomas
Administrative Law Judge

April 12, 2024
Decision Dated and Mailed

pbt/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.