

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW S LINDLEY

Claimant

APPEAL 21A-UI-00172-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMONWEALTH ELECTRIC CO OF THE

Employer

OC: 04/05/20

Claimant: Respondent (4/R)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.1A(37) – Total and Partial Unemployment

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 § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Commonwealth Electric Company (employer) appealed a representative's November 24, 2020, decision (reference 01) that concluded Matthew Lindley (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 3, 2021. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Kelsey Drexel, Payroll Manager. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant is eligible for total or partial unemployment benefits, still employed at the same hours and wages, whether the claimant is able and available for work and/or whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 25, 2016, and is presently employed as a full-time apprentice electrician.

The employer and the claimant's union, Local 347, have an agreement that members in the apprentice program will be allowed to attend classes five weeks per year, rather than working their regular job duties and hours. Employees in the apprentice program do not choose when or if they attend classes. An employee who does not attend the regular classes may be expelled from the apprenticeship program, demoted, or terminated. The employer requires the employees attendance and does not pay the employee for their time. Removal from the program could result in the employee's demotion into another position in the company or termination.

For the two weeks ending October 31, 2020, the claimant quarantined due to Covid-19. The employer granted his request for a leave of absence. It did not pay him any wages.

For the week ending November 7, 2020, the claimant attended apprenticeship training classes in Des Moines, Iowa. During the week of training, the employer did not assign the claimant any work and the claimant did not refuse any work. He was not paid wages from the employer. The claimant filed for unemployment insurance benefits for the week ending November 7, 2020, and did not report any wages. No work would have been available for the claimant had the claimant not been required to attend training. The employer did not give the claimant a choice about whether to work or attend the training.

The claimant filed for unemployment insurance benefits with an effective date of April 5, 2020. His weekly benefit amount was determined to be \$518.00. The claimant received benefits of \$518.00 per week for the weeks ending October 24, 2020, and November 7, 2020. This is a total of \$1,036.00 in state unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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 96.1A, 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(1) and (10) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. When employees request and are granted a leave of absence, they are considered to be voluntarily unemployed. The claimant requested a medical leave of absence and the employer granted the request. The claimant is considered to be voluntarily unemployed, or unavailable for work, during the period of the medical leave of absence and is not eligible to receive unemployment insurance benefits for the week ending October 24, 2020.

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits for the week ending July 7, 2020.

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

The evidence shows that the claimant was able and available for work during the benefit week ending November 7, 2020. The claimant was absent from work that week to attend employment-related training. The employer did not assign the claimant any work and the claimant did not refuse any work. The training was an unpaid mandatory condition of continued employment. It cannot be considered a voluntary leave of absence. The claimant's separation for the week ending November 7, 2020, to attend training was a result of an agreement between the union and the employer. No work was provided by the employer and the training was mandatory to maintain employment. The claimant was temporarily laid off due to lack of work. The claimant was able and available for work for the week ending November 7, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law for the week ending October 24, 2020, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

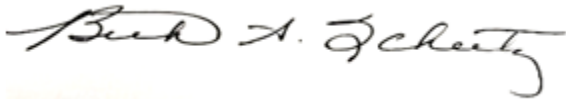
The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The November 24, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is not able to work and available for work for the week ending October 24, 2020. The claimant was able and available for work for week ending November 7, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge
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February 17, 2021
Decision Dated and Mailed

bas/mh