

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSEPH E DAVIS

Claimant

APPEAL 19A-UI-08214-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MODERN PIPING INC

Employer

OC: 09/22/19

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 18, 2019 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits from September 22, 2019 through September 28, 2019 because he did not work for the major portion of his scheduled workweek with his regular employer. The parties were properly notified of the hearing. A telephone hearing was held on November 7, 2019. The claimant, Joseph E. Davis, participated personally. The employer, Modern Piping Inc., registered a telephone number to be contacted at for the hearing but did not answer when the administrative law judge telephoned the employer's witness at the date and time scheduled for the hearing. As such, the employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Is the claimant able to work and available for work effective September 22, 2019 through September 28, 2019?

Is the claimant voluntarily unemployed due to a requested leave of absence?

Was the claimant totally or partially unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant is employed as a full-time pipefitter for this employer. He began working for this employer on May 6, 2016 as a pipefitter and has only been employed as a pipefitter for this employer. He typically works 40 hours or more per week. Claimant did not work the week of September 22, 2019 through September 28, 2019 and did not earn any wages, holiday pay, vacation pay, or pension pay.

As part of his requirement to be in the union, claimant was required to attend training related to his work as a pipefitter the week of September 22, 2019 through September 28, 2019. The

employer only hires union pipefitters. As such, claimant was required to attend this training in order to remain eligible for his employment with this employer.

The employer did not schedule the claimant to work the week of September 22, 2019 through September 28, 2019 because it was aware that the union training was occurring. The claimant never requested a leave of absence from the employer for that week, he was simply not scheduled to work.

REASONING AND CONCLUSIONS OF LAW:

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

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".**

(emphasis added.)

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.

(emphasis added).

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.

(emphasis added).

Iowa Admin. Code r. 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

(emphasis added).

In this case, the claimant did not work or earn wages during the week ending September 28, 2019. Therefore, he was totally unemployed that week. The question then becomes whether claimant was off work due to a temporary layoff or on a voluntary leave of absence. Claimant was required to attend the training in order to retain his employment because this employer only employs union pipefitters. Further, claimant never requested a leave of absence in order to attend the training. The employer unilaterally failed to schedule him for work that week. A voluntary leave of absence must be taken **with the consent of both parties**. See Iowa Admin. Code r. 24.22(2)(j). Claimant never requested a voluntary leave of absence. As such, claimant was not on a requested leave of absence, but was temporarily totally unemployed due to a lack of work. Because claimant was temporarily totally unemployed due to lack of work, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 18, 2019 (reference 01) unemployment insurance decision is reversed. The claimant did not request a leave of absence and was temporarily totally unemployed for the week-ending September 28, 2019 due to lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn