

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KADE M BERRY
Claimant

COMMUNITY ELECTRIC INC
Employer

APPEAL 18A-UI-02905-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

The employer filed an appeal on behalf of the claimant from the March 1, 2018, (reference 01) unemployment insurance decision that denied benefits based upon not being considered partially unemployed effective February 11, 2018. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. Claimant participated. Employer participated through company president Mike Palmer. Both parties agreed to have the issue of benefit payment for the week-ending March 10, 2018, resolved in this hearing and decision. They also agreed to consolidate the 1:00 p.m. and 2:00 p.m. hearings 18A-UI-02905-DL-T and 18A-UI-02906-DL-T.

ISSUE:

Does the claimant meet the definition of being considered partially unemployed effective February 11, 2018?
Is the claimant able to work and available for work effective February 11, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed and attended apprenticeship training during the weeks beginning February 4, 2018, and March 4, 2018. The training is required for licensing and employment. He was not paid wages for the training and the employer does not protest payment of unemployment insurance benefits for those two weeks. The trainer provided incorrect information to claimant and others about filing a new claim on Sunday following the week of unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is partially unemployed, able to work and available for work for the the week-ending March 10, 2018.

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.

Since claimant was attending mandatory training for the employment and was not paid wages for that week, he is considered partially unemployed, able to work and available for work during the week-ending March 10, 2018.

DECISION:

The March 1, 2018, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is partially unemployed, able to work and available for work the week-ending March 10, 2018. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs