

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MIKE J WAKEMAN
Claimant

APPEAL NO. 21A-UI-08571-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE WALDINGER CORPORATION
Employer

**OC: 01/24/21
Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Mike Wakeman, filed a timely appeal from the March 24, 2021, reference 01, decision that denied benefits for the period beginning January 24, 2021, based on the deputy's conclusion that the claimant was not available for work. The decision referred to the claimant as a full-time student. After due notice was issued, a hearing was held on June 4, 2021. Claimant participated. Joe Porepp represented the employer. Exhibit A, the appeal letter, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the week that ended January 30, 2021.

Whether the claimant was partially and/or temporarily unemployed during the week that ended January 30, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has at all relevant times been employed by The Waldinger Corporation as a full-time apprentice electrician. The claimant is a member of IBEW Local 347 and is in his fourth year of the union-sponsored apprenticeship program. The claimant is required to belong to the union and successfully progress in the apprenticeship program as conditions of the employment. The claimant's employment is governed in part by a collective bargaining agreement between the union and the employer. The claimant's usual work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. The claimant's wage during the time in question was \$22.32 an hour.

During the week that ended January 30, 2020, the employer had full-time work available for the claimant, but the claimant was not available to perform work because he was participating in a weekly long apprenticeship class presented by the union. The union had provided the class schedule in August 2020.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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 96.1A(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.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

The Iowa Employment Appeal Board exercises jurisdiction over appeals filed from decisions entered by the administrative law judges in the Iowa Workforce Development Unemployment Insurance Bureau. The Employment Appeal Board has consistently ruled that an employee absent from the workplace to participate in apprentice training under similar circumstances to those present in this case was on a leave of absence, not available for work within the meaning of law, not partially unemployed, not temporarily unemployed, and not eligible for benefits for the relevant period. The decision from which the claimant appealed reflects Iowa Workforce Development's decision as an agency to follow the Employment Appeal Board's interpretation of the applicable law. Under the circumstances, the Employment Appeal Board's approach provides strong persuasive authority for how the administrative law judge should analyze the availability issue and related issues in this case. Accordingly, the administrative law judge concludes that Claimant was on a leave of absence and not available for work within the meaning of the law during the week that ended January 30, 2021. During that week, the claimant took time away from the employment to participate in voluntary apprentice training. The employer had full-time work for the claimant, but the claimant was unavailable for that work. In addition to not being available for work within the meaning of the law, the claimant cannot be deemed partially and/or temporarily unemployed that week. Benefits are denied for the benefit week that ended January 30, 2021. The employer's account will not be charged.

DECISION:

The March 24, 2021, reference 01, decision is modified without changing the impact on the claimant's eligibility for benefits. During the week that ended January 30, 2021, the claimant was on a leave of absence, was voluntarily unemployed, and was not available for work within the meaning of the law. The claimant was not partially and/or temporarily unemployed that week. Benefits are denied for the benefit week that ended January 30, 2021. The employer's account will not be charged.



James E. Timberland
Administrative Law Judge

September 20, 2021
Decision Dated and Mailed

jet/scn