

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN C RICHARDS
Claimant

SIVYER STEEL CASTINGS LLC
Employer

APPEAL 21R-UI-24160-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/21
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The claimant/appellant, Steven C. Richards, filed an appeal from the June 23, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. A first telephone hearing was scheduled for August 23, 2021. Claimant failed to appear and his appeal was dismissed. See Appeal 21A-UI-14742-JC-T. Claimant successfully requested reopening to the Employment Appeal Board (EAB), who remanded the matter for a new hearing.

The parties were properly notified about the hearing. A telephone hearing was held on December 22, 2021. The claimant participated personally. The employer/respondent, Sivyer Steel Castings LLC., participated through Jennifer Collins, HR Director. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant totally, partially or temporarily unemployed for the period of April 4, 2021 through May 29, 2021? Was the claimant able to work and available for work effective April 4, 2021 through May 29, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with the employer on November 1, 2018 and worked as a full-time millwright until March 26, 2021 when he was discharged for excessive absenteeism. The issue of claimant’s separation from employment has not yet been addressed by the Benefits Bureau.

Claimant was totally unemployed for the period of April 4, 2021 through May 9, 2021. He received no wages or compensation, and was otherwise able and available for work.

On May 10, 2021, employer rehired claimant and placed him on a "last chance agreement". Claimant performed returned to work full-time, and continued to make weekly continued claims through May 29, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge, modifies the initial decision in favor of the employer/appellant.

Iowa Code § 96.19(38)b provides:

As used in this chapter, unless the context clearly requires otherwise:

38. "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 38, paragraph "b", subparagraph (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. 871-24.23(23) provides:

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

(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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that he is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

For the period of April 4, 2021 through May 9, 2021: Claimant was totally unemployed because he had been discharged from the employer. Claimant was otherwise able and available for employment. Claimant is not ineligible for benefits during this period. The crux of claimant's eligibility for this period hinges on the separation between the parties on March 26, 2021. The issue of claimant's separation from employment effective March 26, 2021 is remanded to the Benefits Bureau for an investigation.

For the period of May 10-29, 2021: Claimant began a new period of full-time employment. He no longer met the eligibility requirements for receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The unemployment insurance decision dated June 23, 2021, (reference 01) is modified in favor of the claimant/appellant. For the period of April 4, 2021 through May 9, 2021, the claimant was totally unemployed, and allowed benefits, provided he is otherwise eligible. Effective May 10, 2021, claimant was employed full-time. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of claimant's separation from employment effective March 26, 2021 is remanded to the Benefits Bureau for an investigation.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 25, 2022
Decision Dated and Mailed

jlb/mh