

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL GOMEZ**  
Claimant

**APPEAL 21A-UI-16844-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRI CITY ELECTRIC CO OF IOWA**  
Employer

**OC: 05/24/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

On July 31, 2021, the claimant filed an appeal from the July 29, 2021, (reference 02) unemployment insurance decision that denied benefits the one week ending May 8, 2021 based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2021. The claimant participated. The employer participated through Human Resources and Safety Coordinator Nicole Leyendecker.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Is the claimant able to work and available for work during the one week ending May 8, 2021?  
Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

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

The claimant is employed full-time with Tri City Electric Co of Iowa as an apprentice electrician. The claimant began his employment on July 29, 2019.

The claimant is a member of the Union which collectively bargains with Tri City Electric Co of Iowa. The Union offers its members the opportunity to participate in an apprenticeship program. The apprenticeship program lasts for five years. It consists of six week-long classes and on the job training with a journeyman electrician. The classroom training benefits both the apprentice and the employer. If an apprentice elects not to attend this classroom training, he or she will eventually be no longer able to work for employer as a union employee. The claimant does not receive pay during the weeks training occurs.

The Union makes claimant and employer aware of the training dates. Employer is aware claimant will attend the training and allows him to do so.

The claimant attended apprenticeship training on a full-time basis during business hours during the one week ending May 8, 2021.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is unavailable for work during the one week ending May 8, 2021.

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 96.1A(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.

While claimant was totally unemployed during the one week ending May 8, 2021, he was not considered "temporarily unemployed" as defined by the statute below.

In this case, claimant was not off work because of a plant shutdown, vacation, inventory, or lack of work or other emergency. Therefore, the time off work to attend training does not meet the definition of “temporarily unemployed” and claimant is not exempt from the requirement to be able to and available for work.

Iowa Admin. Code r. 871-24.23 (5) and (10) provide:

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

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

(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 administrative law judge concludes claimant was not available for work during the one week ending May 8, 2021.

The claimant and Ms. Leyendecker contend the claimant’s attendance at the apprenticeship class cannot be mandatory because it is imposed by the employer. The administrative law judge does find this contention misplaced because he is a member of a union. He opted to be in the apprenticeship program. The apprenticeship program is a product of collective bargaining conducted by the employer and the Union. The Union acting on the claimant’s behalf as the exclusive bargaining representative consented to this scheme during collective bargaining. See *Efkamp v. IDJS*, 383 N.W.2d 566, 569-70 (Iowa 1986) (holding an employee’s personal disagreement regarding the collectively bargained terms does mean his voluntary resignation was with good cause attributable to the employer as a substantial change in the contract of hire). Thus it is a period of voluntary unemployment with consent of the employee and the employer and claimant is ineligible for benefits during the one week ending May 8, 2021. See Iowa Admin. Code r. 871-24.23 (10).

Alternatively, if claimant’s one week of training is not considered a voluntary leave of absence, claimant is not eligible for benefits because he was attending class full time. See Iowa Admin. Code r. 871-24.23 (5).

The administrative law judge does understand the financial impact of this decision on the claimant and other apprentices. While he is sympathetic to those concerns, it is clear that the Employment Security Law is meant for paying an employee who is able and available for work, provided they are not temporarily unemployed, when work is not made available to him or her. What the claimant is asking for here is a stipend to offset class expenses and the lost remuneration he would have received for the week in question. Benefits are denied.

#### **DECISION:**

The July 29, 2021, (reference 02) decision is affirmed. The claimant is not eligible for benefits during the one week ending May 8, 2021, as he was not available for work.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

September 29, 2021  
Decision Dated and Mailed

smn/ol