

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ZEBEDEE J NOEL
Claimant

**COMMONWEALTH ELECTRIC COMPANY
OF THE MIDWEST**
Employer

APPEAL NO. 21A-UI-22395-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Respondent (2R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 1, 2021, reference 01, decision that allowed benefits to the claimant for the period beginning May 2, 2021, provided the claimant was otherwise eligible, based on the deputy's conclusion that the claimant was able to work and available for work, but on a short-term layoff. After due notice was issued, a hearing was held on November 30, 2021. Claimant, Zebedee Noel, did not comply with the hearing notice instructions to call the designated number at the time of the hearing and did not participate. Kelsey Drexel represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

ISSUES:

Whether the claimant was able to work and available for work during the week of May 2-8, 2021.

Whether the claimant was partially and/or temporarily unemployed during the week of May 2-8, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Zebedee Noel, is employed by Commonwealth Electric Company of the Midwest as a full-time apprentice electrician. The claimant's usual work hours are 7:30 a.m. to 4:00 p.m. Monday through Friday. The claimant began the employment in July 2019 as a construction wireman (CW). In May 2020, the claimant began an apprenticeship program sponsored by IBEW Local 347 and began his apprentice position with the employer. The employer has a contract with Local 347 under which apprentices are required to be union members. The claimant's wage is tied to his successful progress in the apprenticeship program.

During the week of May 2-8, 2021, the claimant participated in full-time apprenticeship classes presented by the Local 347 Joint Apprenticeship and Training Committee (JATC). The hours of the training were 8:00 a.m. to 4:00 p.m. Monday through Friday. The Local 347 provided the

employer with a training schedule. Though the employer had the claimant's regular full-time duties available during the week of May 2-8, 2021, the employer allowed the claimant that time off without pay so the claimant could participate in the full-time apprenticeship training.

The claimant established an original claim for benefits that was effective May 2, 2021. Commonwealth Electric is the sole base period employer. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$373.00. The claimant made a weekly claim for the week that ended May 8, 2021 and then discontinued his weekly claims. Iowa Workforce Development paid \$373.00 in regular benefits and \$300.00 in Federal Pandemic Unemployment Compensation (FPUC) benefits to the claimant for the week that ended May 8, 2021.

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 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 affected period. 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 May 8, 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 May 8, 2021. The employer's account will not be charged.

DECISION:

The October 1, 2021, reference 01, decision is reversed. The claimant was not available for work, not temporarily unemployed, and not partially unemployed within the meaning of the law judge the week the ended May 8, 2021. Rather the claimant was on an approved leave of absence. The claimant is not eligible for benefits for the week that ended May 8, 2021.

This matter will be remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received for the week that ended May 8, 2021.



James E. Timberland
Administrative Law Judge

January 5, 2022
Decision Dated and Mailed

jet/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.