

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JOHN J GAYEWSKI
Claimant

APPEAL NO. 19A-UI-03701-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANK MILLARD & CO INC
Employer

OC: 10/14/18
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

Frank Millard & Co (employer) appealed a representative's April 26, 2019, decision (reference 03) that concluded John Gayewski (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 24, 2019. The claimant participated personally. The employer was represented by Chris Hunter, Hearings Representative, and participated by Diana McCannon, Payroll Manager.

ISSUE:

The issue is whether the claimant is able and available for work for the week ending April 6, 2019.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2017, as a full-time pipe fitter apprentice. As a requirement of his job, he had to attend apprenticeship training classes. The employer contributes to a fund so that workers in the apprenticeship program may attend training classes multiple times during the course of the year. The training classes increase the workers' knowledge which, in turn, benefits the employer.

Union Local 125 gave the employer a calendar of classes. The employer told the claimant which classes he was required to attend. The employer authorized the claimant to attend an apprenticeship training class for the week ending April 6, 2019. This class was required for the claimant to keep his job, his health insurance, pension, and pay increases. During that week the employer did not pay the claimant any wages or offer him any work. He attended apprenticeship training for the week ending April 6, 2019, even though he would have rather performed services for the employer. The claimant did not file for a leave of absence during that week. The claimant received unemployment insurance benefits in the amount of \$367.00 for the week ending April 6, 2019. The claimant did not file for benefits after that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work for the week ending April 6, 2019.

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

During the week ending April 6, 2019, the claimant was suspended from work status for lack of work orders. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. The claimant is considered able and available for work during this period. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's April 26, 2019, decision (reference 03) is affirmed. The claimant is considered able and available for work for the week ending April 6, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs