

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIKE J WAKEMAN

Claimant

THE WALDINGER CORPORATION

Employer

APPEAL 21A-UI-23998-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/21

Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages
Iowa Code § 96.1A(37) – Total and Partial Unemployment
Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The Waldinger Corporation, the employer/appellant, filed an appeal from the October 20, 2021, (reference 06) unemployment insurance (UI) decision that allowed benefits as of September 19, 2021 due to a short-term layoff. The parties were properly notified of the hearing. A telephone hearing was held on December 17, 2021. The employer participated through Joe Porepp, Des Moines electrical division manager. Mr. Wakeman participated and testified. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Mr. Wakeman able to and available for work?
Is Mr. Wakeman temporarily or partially unemployed?
If so, is the employer's account subject to charge?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Wakeman began working for the employer, a base period employer, on July 1, 2017. He works as a full-time electrical apprentice 4. His hourly pay is \$27.03. Mr. Wakeman has no other base period wages.

The agreement between Mr. Wakeman's employer and his union provides that Mr. Wakeman will attend training at certain times, not be available for work, and not be paid by the employer for those trainings. Mr. Wakeman must attend the trainings.

Mr. Wakeman attended training the week of September 19-25, 2021. The employer had work available for Mr. Wakeman if he had not attended trainings. The employer did not pay Mr. Wakeman for this week. Mr. Wakeman returned to work in his same job at his same pay after the one week of training, and he remains employed by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that Mr. Wakeman was not available to work the week of September 19-25, 2021.

Iowa Code § 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 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 § 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.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced

workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Iowa Code section 96.7(2)a(2)(a) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the 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. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

In this case, Mr. Wakeman was not available to work the week of September 19-25, 2021. Mr. Wakeman is in an apprenticeship program and understands that to be in the program he will need occasional time off work to attend trainings. Mr. Wakeman submitted himself to the program by choosing to start work in the apprenticeship program. It is understandable that Mr. Wakeman would take steps to get paid for the week he was in training. However, since he was not available to work the week of September 19-25, regular, state-funded unemployment insurance benefits are denied for that week.

DECISION:

The October 20, 2021, (reference 06) unemployment insurance decision is reversed. Mr. Wakeman was not available for work the week of September 19-25, 2021. Benefits are denied that week.



Daniel Zeno
Administrative Law Judge
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January 20, 2022

Decision Dated and Mailed

dz/abd