

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LOGAN T PURCELL

Claimant

APPEAL 19A-UI-04633-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANK MILLARD & CO INC

Employer

OC: 11/04/18

Claimant: Respondent (2)

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:

The employer filed an appeal from the May 29, 2019, (reference 02) unemployment insurance decision that allowed benefits based upon a temporary layoff. The parties were properly notified about the hearing. A telephone hearing was held on July 2, 2019. Claimant participated personally and through business manager and financial secretary for Sheetmetal Workers Local 91 Eric Meirhaeghe. Claimant was represented by attorney John Remus. Employer participated through payroll manager Diana McCannon and was represented by Diana Perry-Lehr. Claimant's Exhibits A through G were received.

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 18, 2019?
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: Claimant is employed full-time with Frank Millard and Company, Inc. as a sheet metal worker apprentice. Claimant began working for this employer in August 2015. Claimant is a member of the International Association of Sheet Metal, Air, Rail, and Transportation Workers Local Union No. 91 ("Local 91"). Claimant is required to be a member of Local 91 in order to maintain his employment with employer.

Claimant originally began his employment as a tradesman, but on July 1, 2016, he became an apprentice under the supervision of the Local 91 Joint Apprenticeship and Training Committee ("Local 91 JATC"). Claimant entered into a written apprenticeship agreement with the JATC acting as an agent of the employer. The JATC is comprised of six members, three of whom are selected by and represent management and three of whom are selected by and represent the laborers. The employer has one member who sits on the Local 91 JATC. As part of the apprenticeship agreement, claimant becomes indentured to employer during the term of the apprenticeship.

The Local 91 JATC is responsible for regulating the apprenticeship program. The Duties of Apprentices include attending regularly and completing satisfactorily the required hours of instruction in subjects related to the trade. 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 expelled from the apprentice program. At that point, claimant would no longer be able to work for employer as an apprentice. However, claimant could maintain his employment as a tradesman for a lower rate of pay and less benefits.

The Local 91 JATC sends out a schedule at the beginning of the year and makes both employer and claimant aware of the training dates. Employer does not require claimant to request time off to attend the training. Employer is aware claimant will attend the training and reminds him of the training. Employer does not schedule claimant to work during the weeks of training.

Claimant attended training during the one week ending May 18, 2019. This training was located in Rock Island, Illinois. Claimant was not paid wages to attend this training. The employer would have had work available for claimant that week, had he not been assigned to attend training.

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 18, 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. 871-24.22(2)(1), (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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

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.

The administrative law judge concludes claimant was not available for work during the one week ending May 18, 2019. Claimant attended training required for the apprenticeship program he signed up for with his local union. Employer agreed to allow claimant to attend the training and employ claimant during his participation in the program. However, the employer does not require claimant to attend the training or participate in the program in order to maintain his employment. The period of training was a leave of absence negotiated with the consent of the employee and the employer. It is deemed a period of voluntary unemployment and claimant is ineligible for benefits during the one week ending May 18, 2019.

Alternatively, if claimant's one week of training is not considered a voluntary leave of absence, claimant is not eligible for benefits because he cannot establish he is able to and available for work that week.

While claimant was totally unemployed during the one week ending May 18, 2019, he was not considered "temporarily unemployed" as defined by the statute below.

Iowa Code section 96.19(38) 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.

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) provides:

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.

In this case, claimant was not able to and available for work as he was attending full-time training during the week in question.

In summary, claimant has not established he was available to work during the one week ending May 18, 2019, as his burden, and therefore he is not eligible for benefits for that week.

DECISION:

The May 29, 2019, (reference 02) decision is reversed. The claimant is not eligible for benefits during the one week ending May 18, 2019, as he was not available for work.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn