

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASON EDEN
Claimant

DAY MECHANICAL SYSTEMS INC
Employer

APPEAL NO. 19A-UI-05609-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/28/18
Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available
871 IA Admin. Code 24.23(10) – Leave of Absence
Iowa Code § 96.19(38) – Partial and Temporarily Unemployment

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 3, 2019 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 7, 2019. Claimant participated personally. Employer participated by Stephanie Tucker.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked for employer as an apprentice pipefitter at a union shop that had been in business over ten years. Employer remained in communication with the local union to hire employees when needed and also to get information as to when classes would be going on for apprentices. Employer works in conjunction with the local union as to when the union would have classes for the apprentices.

Employer stated that claimant and similarly situated employees must attend these trainings in order to stay employed. Employer understands that the trainings are obligatory for the claimant to continue with his apprenticeship and employer stated that claimant would not have his job if he did not attend the trainings. Employer stated that they are contacted by the local union and told of employees who are subject to the training that is to occur that month. Employer then schedules the claimant off from work to attend training.

The week of June 9, 2019 – June 15, 2019 claimant attended required training. The union directly required that claimant attend the training to continue in his union apprenticeship. Employer required claimant remain in good standing with the union to continue with his employment.

REASONING AND CONCLUSIONS OF LAW:

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 96.19, 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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Code § 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.

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.

In this matter, employer required that claimant attend the classes in the week of June 9, 2019 – June 15, 2019. Claimant would not have held his job had he refused to go to the training. At the time of hire, claimant was not told that he would have to take unpaid leave from work in order to attend training.

The administrative law judge is not at liberty in reaching this decision to assume facts that have not been introduced into evidence. What is not is evidence and has not been offered by the employer is the contract that exists between the employer and the local union.

This matter was initiated by employer after they were contacted by the local union. It was the employer who shared with claimant the time that he would be off from work. The particular facts of this case do not jibe with claimant being granted a leave of absence as a leave of absence is necessarily initiated by the employee and approved by the employer. Rather, the employer has essentially demanded that claimant attend work and the employer has specifically stated that claimant would not be able to continue with his employment if he were to choose not to attend the training.

For the administrative law judge to look at the training as anything more than a requirement of the employer in this instance is to make even further assumptions. Whereas claimant has hopes to become a union pipefitter, he is not there today. Nor will he be there after attending this class for a week. Claimant is not assured of ever becoming a tradesman in this industry, although he hopes to become one. Thus, this matter must be looked at as it exists before the administrative law judge. Claimant will be terminated if he doesn't attend classes. Employer told claimant of the classes, and the fact that claimant must attend classes at this time.

Iowa Code § 96.4-3(c)states: An individual shall be deemed 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.

Said Code section does not state what is to constitute an emergency. An emergency is or could constitute a demand by employer for claimant to do any action that is work-related. Unless the Code dictates an emergency, an emergency may be framed as a particular action at a particular place and time when the employee must complete the action or will be terminated. Thus, the attending the training can constitute an emergency. If it is an emergency to attend the training, then claimant's attending the training constituted a temporary unemployment. Claimant is therefore eligible to receive benefits for the time missed.

DECISION:

The decision of the representative dated July 3, 2019, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective for the week of June 9, 2019 through June 15, 2019, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn