

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

ERIC J DORGE

Claimant

and

WINGER CONTRACTING CO

Employer

HEARING NUMBER: 19BUI-01347

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3, 96.19-38B

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Eric J. Dorge, worked for Winger Contracting Co. beginning February of 2016 as a full-time sheet metal service technician. The Employer and Union Local 91 contribute to a fund so that workers may attend training classes.

The Claimant requested, and the Employer agreed to authorize, a leave of absence so that the Claimant could attend an apprenticeship training class in Rock Island, Illinois for the week ending February 9, 2019. This class was required for the Claimant to achieve journeyman status. Although the Employer benefits from having trained workers, the Claimant was *not* however required to attend the class in order to maintain his employment with the Employer. During that week the Employer did not pay the Claimant any wages. The Claimant was on a leave of absence that week so that he could attend full-time classes. He had no intent of working that week for any employer.

For the week ending February 9, 2019, the Claimant received \$485.00 in unemployment insurance benefits. The Claimant did not file for benefits in any other week.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code 871 IAC 24.22(2) states:

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed

Similarly, rule 871 IAC 24.23(10) states:

24.23 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.

Here the Claimant requested a leave of absence to attend training. Since the Employer would benefit as well the Employer agreed to the training leave of absence, but without pay. The evidence supports that the training was not mandatory in the sense that it was not required in order for the Claimant to keep working for the Employer. Nor does the evidence establish that attainment of journeyman status by some date certain was a mandatory condition of continued employment. On this record it appears that the training was desirable to both parties, not a unilaterally imposed condition. As such the leave of absence for training was one negotiated with the consent of both Employer and employee, and so "is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period." 871 IAC 24.22(2)(j). Benefits are denied for the week in question.

Finally, since the Administrative Law Judge allowed benefits and in so doing affirmed a decision of the claims representative the Claimant falls under the double affirmance rule:

871 IAC 23.43(3) Rule of two affirmances.

a. Whenever an administrative law judge affirms a decision of the representative or the employment appeal board of the Iowa department of inspections and appeals affirms the decision of an administrative law judge, allowing payment of benefits, such benefits shall be paid regardless of any further appeal.

01347

b. However, if the decision is subsequently reversed by higher authority:

- (1) The protesting employer involved shall have all charges removed for all payments made on such claim.
- (2) All payments to the claimant will cease as of the date of the reversed decision unless the claimant is otherwise eligible.
- (3) No overpayment shall accrue to the claimant because of payment made prior to the reversal of the decision.

Thus the Employer's account may not be charged for any benefits paid so far to the Claimant for the weeks in question, but the Claimant will not be required to repay benefits already received.

DECISION:

The administrative law judge's decision dated March 15, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not able and available for week for the week ending February 9, 2019. Accordingly, he is denied benefits for that week.

No remand for determination of overpayment need be made under the double affirmance rule, 871 IAC 23.43(3), but still the Employer's account may not be charged.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv

James M. Strohman