

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSTY L JOHNSON
Claimant

APPEAL NO. 19A-UI-04373-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

B G BRECKE INC
Employer

OC: 05/05/19
Claimant: Respondent (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partially Unemployed
Iowa Code Section 96.19(38)(c) – Temporarily Unemployed
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 24, 2019, reference 01, decision that allowed benefits effective May 5, 2019 provided the claimant met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on June 24, 2019. Claimant Rusty Johnson participated. Carley Cohout represented the employer. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims (KCCO) and of the benefits disbursed to the claimant (DBRO).

ISSUES:

Whether Mr. Johnson was able to work and available for work within the meaning of the law during the week of May 5-11, 2019.

Whether Mr. Johnson was partially unemployed and/or temporarily unemployed during the week of May 5-11, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the week of May 5-11, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rusty Johnson is employed by B.G. Brecke, Inc. as a full-time Apprentice Pipe-fitter. During the week of May 5-11, 2019, Mr. Johnson participated in full-time class room training at union local training facility in Cedar Rapids. Mr. Johnson's continued employment with B.G. Brecke, Inc. was conditioned upon his continued participation in the apprentice program, including the associated classroom training. The employer concedes that Mr. Johnson would be discharged from his employment if he was no longer in the apprenticeship program. Prior to the week of

training the union provided the employer with proposed training weeks and the employer approved the proposed training weeks. Only after the employer approved the approved training weeks did the union notify Mr. Johnson when he would need to report for the classroom training. Mr. Johnson did not have to request time off to attend the training. The employer did not schedule any work for Mr. Johnson during the week of training. The employer did not pay Mr. Johnson any wages for the week of training. The union provided Mr. Johnson with a \$200.00 stipend for the week of training. Mr. Johnson made a weekly unemployment insurance claim for the week that ended May 11, 2019 and then discontinued his claim for benefits. The employer is the sole base period employer. Mr. Johnson received \$467.00 in benefits for the week that ended May 11, 2019.

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".

An individual shall be deemed partially unemployed in any week in which, 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. Iowa Code Section 96.19(38)(b).

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 Code Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(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.

Whether one relies upon a theory of partial unemployment or temporary unemployment, Mr. Johnson is eligible for benefits for the benefit week that ended May 11, 2019, provided he meets all other eligibility requirements. Under the partial unemployment analysis, Mr. Johnson worked fewer (zero) wage-generating hours during the week of training and thereby earned less than his weekly benefit amount plus \$15.00. Under the temporary unemployment analysis, the employer elected not to assign work to Mr. Johnson or pay him wages during the week of the training, which left Mr. Johnson temporarily unemployed. The parties are in agreement that had Mr. Johnson not participated in the required week of training and been expelled from the apprenticeship program, the employer would have discharged him from the employment. Based on this employment-related situation, the employer's account may be assessed for the benefits paid to the claimant for the week that ended May 11, 2019.

DECISION:

The May 24, 2019, reference 01, decision is affirmed. The claimant was able and available for work during, and partially and/or temporarily unemployed, the week that ended May 11, 2019. The claimant is eligible for benefits for the week that ended May 11, 2019, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn