

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J CRADY
Claimant

APPEAL NO: 11A-UI-05917-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 12/26/10
Claimant: Appellant (2)

Section 96.4-3 – Able and Available
Section 96.4-6-a – Department Approved Training

STATEMENT OF THE CASE:

Dustin J. Crady (claimant) appealed a representative's April 27, 2011 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in connection with his availability for work with Jeld-Wen, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2011. The claimant participated in the hearing. Tom Kuiper of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Gayle Kingery. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on April 3, 2009. He worked full time as a sawyer on the first shift at the employer's Grinnell, Iowa facility. His last day of work was January 7, 2011. He was laid off for lack of work at that time.

The claimant determined to return for additional college education, and enrolled at a community college in January. He made application for Department Approved Training (DAT), and on January 20, 2011 an Agency representative issued a decision (reference 01) granting DAT status from January 9 through at least May 7, 2011.

On April 1 the employer made the claimant an offer of recall for work. The claimant declined, indicating that the work schedule would conflict with his class schedule. Because the claimant declined the recall to work and was unavailable for his prior work schedule due to his college schedule, the employer protested, and another Agency representative issued the decision which is the subject of this case concluding that the claimant was not eligible to receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must generally be able and available for work on the same basis as when he was previously working, and must be earnestly and actively seeking work. Iowa Code § 96.4-3. However, there are some exceptions.

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 Code § 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

871 IAC 24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

- a. The educational establishment at which the claimant would receive training.
- b. The estimated time required for such training.
- c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code § 96.4(6).

The claimant has been granted department approved training. He is therefore exempt from the requirements to be able and available for work while he remains in that status, which was the case when the offer of recall was made to him April 1. However, the employer is not subject to charge for benefits paid to the claimant while he remains in that status.

DECISION:

The representative's April 27, 2011 decision (reference 02) is reversed. The claimant is exempt from the requirement that he able to work and available for work effective January 9, 2011 through at least May 7, 2011 because of the granting of department approved training status. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer is not subject to charge while the claimant remains in that status.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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