

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAKE A WALLER**  
Claimant

**APPEAL NO. 19A-UI-03465-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINGER CONTRACTING CO**  
Employer

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

Iowa Admin. Code r. 871-24.23(26) – Part-Time Worker – Same Wages and Hours  
Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.7(2)A(2) – Partial Benefits  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 24, 2019, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on May 15, 2019. Claimant participated personally. Employer participated by witness Mandy Thrasher and attorney Patrick Curran. Claimant failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

As employer was the only participant in the hearing, all findings of fact are derived from employer's testimony. The claimant currently works for Winger Construction, a base period employer, under different terms and conditions as contemplated in the original contract of hire. Claimant was hired as a general laborer for employer in 2015. He worked full-time at that position for two years. In 2017, claimant decided to apply with the local union for a sheet metal apprenticeship program. Claimant was accepted, and employer agreed to move claimant into the apprenticeship program.

As a part of the apprenticeship, claimant must take union classes multiple weeks a year. Claimant alerts employer of these times, and is given time off from work. Employer and claimant both benefit as claimant is able to gain knowledge and employer is able to have a more informed workforce.

Claimant has classes scheduled with the local union multiple times a year. Claimant most recently attended classes the week of April 7-13, 2019. Claimant was the only sheet metal apprentice to go to the classes. Attendance at the classes by claimant in no way affected employer's output, as the other sheet metal workers covered the ordinary business.

Employer stated that claimant's employment was not dependent on his attending these classes, but claimant's ability to not get moved back to his previous position was dependent on attending these classes. As claimant had been a general laborer prior to his hire, employer stated that claimant was welcome to return to that lower position should he choose not to continue with the apprenticeship training and all that it entails. Claimant understood at the beginning of his apprenticeship that he would be missing work by his choice in order to attend the training. At the time of claimant's initial hire, his entry into an apprenticeship program was not contemplated as a part of his hire.

Claimant continues to work for employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work for the week of April 7-13, 2019.

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 § 96.19(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 Code § 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (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.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

Claimant was hired as a general laborer and worked in that position for years. Claimant decided to apply for a position as an apprentice sheet metal worker knowing that he would be absent from work for a few weeks a year in order to get training needed. Claimant knew the conditions of his training at the time of his choice but still chose to change positions. Because the claimant at all times still has the ability to not go to the classes and retain his employment, the classes are not a condition of claimant's ongoing employment. Benefits are denied.

**DECISION:**

The April 24, 2019, reference 01, decision is reversed. The claimant is not partially unemployed and benefits are denied.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn