

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RUSTY L JOHNSON
Claimant

APPEAL NO: 19A-UI-03061-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

B G BRECKE INC
Employer

OC: 03/25/18
Claimant: Respondent(4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the April 10, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 1, 2019. The claimant participated. The employer participated through Jeff Huegel, payroll administrator. Employer Exhibit 1 was admitted into the hearing record.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant able to work and available for work the week ending March 23, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 24, 2015 and is a full-time pipefitter apprentice. Claimant is affiliated with Local Union 125. As part of the apprenticeship program with the local union, claimant is required to undergo training until he obtains journeyman status. In order to retain employment, claimant must be a member of the union.

The union requires claimant attend apprenticeship training. Employer requires claimant to attend the training. Employer has an agreement with the union with respect to the apprenticeship program. If claimant fails to attend required training, he will have six months added to his five year apprenticeship program or can be dismissed from his apprenticeship.

For the week ending March 23, 2019, claimant attended required apprenticeship training. Employer did not have work available and he was not paid by employer for attending the training. Employer did not schedule the claimant for the company that week and did not pay him for the week of apprenticeship training that had been scheduled. No evidence was

presented that employer attempted to recall claimant to return to work during the week in question. Rather, when the week was over, claimant resumed full-time employment effective March 24, 2019, as scheduled by employer.

Claimant was not required to look for new work during the one week period because he remained attached to employer and was to return back to work the following week.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Code section 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 section 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".

In the case at hand, claimant was employed as an apprentice worker and enrolled in a mandatory apprenticeship training and was not scheduled by employer to work for the one week period in question. Employer did not schedule claimant to work during the one week training based upon collective bargaining agreement in effect between the company and the union. Under the terms of the agreement, employer did not schedule claimant to work and he received no pay from the company. Claimant, however, was expected by the employer to attend the training to retain his employment with the company. It does not appear employer's intent was done to prejudice claimant in his employment relationship with the company, but to enhance claimant's value to the company because the training was directly related to his employment.

Claimant was physically able to work and was available for work but not scheduled or recalled to work by the company during the one week period. Claimant was not required to look for new work during the one week period because he remained attached to employer and was to return back to work the following week. The claimant's one week suspension of work was initiated by the employer and constituted a short-term lay-off. The administrative law judge concludes that the evidence establishes claimant has satisfied the able and available requirements of the law and is eligible to receive unemployment insurance benefits for the week ending March 23, 2019.

Iowa Admin. Code r. 871-24.23(23) provides: Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Effective March 24, 2019, claimant is ineligible for unemployment because he is performing work full-time.

DECISION:

The representative's unemployment insurance decision dated April 10, 2019, (reference 01) is modified in favor of the employer/appellant. Claimant was on a short-term layoff and is considered to be able and available for work during the layoff. Benefits are allowed for the week ending March 23, 2019, provided he is otherwise eligible. Effective March 24, 2019, the claimant is ineligible for benefits due to full-time employment.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn