

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NICK S WINELAND**  
Claimant

**APPEAL 19A-UI-02454-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINGER CONTRACTING CO**  
Employer

**OC: 09/30/18  
Claimant: Respondent (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

Winger Contracting Co. (employer) filed an appeal from the March 18, 2019, reference 02, unemployment insurance decision that allowed benefits based upon the determination Nick S. Wineland (claimant) was unemployed due to a short-term layoff. After due notice was issued, a telephone conference hearing was held on April 8, 2019. The claimant participated personally. The employer was represented by Attorney Patrick F. Curran and participated through Mandy Thrasher, Payroll and Union Benefits Administrator. No exhibits were offered into the record.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending March 16, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full-time as a Pipe Fitter Apprentice. As part of his apprenticeship program, he is required to attend six weeks of training per year. The training is held Monday through Friday from 7:15 a.m. to 4:00 p.m.

The employer granted the claimant time off during the week ending March 16, 2019 to attend a week of training for his apprenticeship program. The employer does not require the claimant to attend the training and it is not a condition of his employment. The employer had work available to the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not available for work for the week ending March 16, 2019. Benefits are denied.

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".

Iowa Admin. Code r. 871-24.22(2) provides, in relevant part:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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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.

Iowa Admin. Code r. 871-24.23(10) provides:

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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The employer does not require the claimant to attend the apprenticeship training to remain employed. The claimant and employer negotiated a leave of absence without pay for the claimant to attend training as it was beneficial to both parties. The claimant was voluntarily unemployed and not available to work during the week ending March 16, 2019. Accordingly, he is not eligible for unemployment insurance benefits and benefits are denied.

**DECISION:**

The March 18, 2019, reference 02, unemployment insurance decision is reversed. The claimant is not able to work and available for work effective March 16, 2019. Benefits are denied.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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