

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRANDON M ROZEK
Claimant

APPEAL NO. 19A-UI-04064-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAY MECHANICAL SYSTEMS INC
Employer

OC: 12/09/18
Claimant: Respondent (2R)

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 8, 2019, reference 01, decision that allowed benefits to the claimant effective April 21, 2019 provided he met all other eligibility requirement and that stated the employer's account would not be relieved of liability for benefits, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on June 12, 2019. Claimant Brandon Rozek did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Stephanie Tucker represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A.

ISSUES:

Whether the claimant was able to work and available for work during the week of April 21-27, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed during the week of April 21-27, 2019.

Whether the claimant was on a leave of absence during the week of April 21-27, 2019.

Whether this employer's account may be assessed for benefits paid to the claimant for the week of April 21-27, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Since March 11, 2019, Brandon Rozek has been employed by Day Mechanical Systems, Inc. as a full-

time Plumber Apprentice. Mr. Rozek's usual start time is 7:00 a.m., though a 6:00 a.m. start time is sometimes requested. Mr. Rozek usual works Monday through Friday, though some work weeks run Monday through Thursday to accommodate customer needs. Until May 1, 2019, Mr. Rozek's hourly wage was \$31.78. Effective May 1, 2019, Mr. Rozek's hourly wage was \$32.42. Mr. Rozek's wage is set by Union Local 125 Plumbers and Pipefitters and his tied to his progress in the local's apprenticeship program. The employer hired Mr. Rozek through the union hall. The employer did not require Mr. Rozek to belong to the union or require him to participate in the union apprenticeship classroom training.

During the week of April 21-27, 2019, Mr. Rozek was absent from work for the purpose of participating in a week-long apprentice class. It is unclear whether Mr. Rozek actually participated in the apprentice training that week. Mr. Rozek did not request time off from work to participate in the apprentice classroom training, but instead assumed the employer knew he would be gone from work that week to participate in the apprentice classroom training. The employer had full-time work available for Mr. Rozek that week. The employer did not pay any wages to Mr. Rozek for the week he was away from work. Mr. Rozek performed full-time work for the employer during both week of April 14-20, 2019 and the week of April 28 through May 4, 2019.

Mr. Rozek established an original claim for benefits that was effective December 9, 2018 and an additional claim for benefits that was effective April 21, 2019. Day Mechanical Systems is not a base period employer in connection with the claim year that began for Mr. Rozek on December 9, 2018 and which will end on December 7, 2019. Mr. Rozek made a weekly claim for the week that ended April 27, 2019 and then discontinued his claim. When Mr. Rozek made the weekly claim, he reported that he was not available for work during the week that ended April 27, 2019. Iowa Workforce Development disbursed \$467.00 in unemployment insurance benefits to Mr. Rozek for the benefit week that ended April 27, 2019.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.23(10) provides:

(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 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.

Mr. Rozek did not participate in the appeal hearing and did not present any evidence to prove by a preponderance of the evidence that he was available for work with the employer during the week that ended April 27, 2019. Mr. Rozek reported on his weekly claim that he was not available for work. Mr. Rozek did not make himself available for work the employer had for him that week. Mr. Rozek presented no evidence to prove that he actually participated in the apprentice training during the week that ended April 27, 2019 or that the employer compelled him to participate in such training. The evidence establishes that Mr. Rozek was job-attached, but neither laid off nor partially unemployed during the week that ended April 27, 2019. For all these reasons, Mr. Rozek is not eligible for the \$467.00 in benefits that he received for the week that ended April 27, 2019. The employer is not a base period employer and, therefore, has not been and cannot be charged for benefits paid to Mr. Rozek for the week that ended April 27, 2019.

This matter will be remanded to the Benefits Bureau for entry of an overpayment decision pertaining to the \$467.00 in benefits Mr. Rozek received for the week that ended April 27, 2019.

DECISION:

The May 8, 2019, reference 01, decision is reversed. The claimant failed to demonstrate that he was available for work during the week that ended April 27, 2019. In addition, the claimant was neither laid off nor partially unemployed during the week that ended April 27, 2019. The claimant is not eligible for benefits for the week that ended April 27, 2019. The employer's account shall not be charged for benefits paid to the claimant for the week that ended April 27, 2019.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision pertaining to the \$467.00 in benefits the claimant received for the week that ended April 27, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs