

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALTON R JESTER
Claimant

B G BRECKE INC
Employer

APPEAL 20A-UI-01168-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/03/19
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
871-24.23(10) Eligibility – A&A – Leave of absence
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

STATEMENT OF THE CASE:

On February 10, 2020, B G Brecke Inc. (employer/appellant) filed an appeal from the February 4, 2020 (reference 03) unemployment insurance decision that determined Dalton Jester (claimant/respondent) was eligible for benefits.

A telephone hearing was held on February 25, 2020. The parties were properly notified of the hearing. Claimant participated personally. Employer participated by Payroll Specialist Stephanie Veach.

ISSUES:

Is the claimant able to work and available for work?

Is the claimant on an approved leave of absence?

Is the claimant totally, partially, or temporarily unemployed?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant is employed full-time with employer as a plumber/pipefitter apprentice. He began his employment on May 11, 2015 as a helper. He began the five-year apprentice program July 7, 2015.

Claimant is a member of the Local 125 union. Claimant goes to union training for one week every six to eight weeks as part of the apprenticeship program. Employer does not require claimant to attend this training. However, he must attend the training in order to remain in the apprenticeship program. Claimant could potentially remain employed by employer as a helper if he were to not attend the training and be removed from the apprenticeship program, but he would make

significantly less money if he were to do so. If claimant does complete the apprenticeship program, he will be recognized as a journeyman plumber and be eligible for higher pay.

The union negotiates with employer at the beginning of each year to set a schedule for training. Employer then allows employees, like claimant, to attend the training. The training is unpaid. Claimant was aware when he started the apprenticeship program that he would not be paid wages during the union training. Claimant attended training January 12 through January 18, 2020. Training was from 7:15 am to 4:30 p.m. The plant was open and operational during training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the February 4, 2020 (reference 03) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED.

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".

Iowa Admin. Code r. 871-24.22(2)j(1), (2) provides:

Benefits 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.

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.

The administrative law judge concludes claimant was not available for work from January 12 to January 18, 2020 because he requested and was granted a leave of absence during that time. Claimant attended training required for the apprenticeship program he signed up for with his local union. The period of training was a leave of absence negotiated with the consent of the employee and the employer. It is deemed a period of voluntary unemployment and claimant is ineligible for benefits during that time.

The administrative law judge understands claimant did not personally request the specific leave of absence in question and that there would be significant economic consequences for him if he chose not to attend the training. However, the employer does not require claimant to attend the training or participate in the program in order to maintain his employment, and claimant did choose to attend the training. Furthermore, the leave of absence was negotiated between employer and claimant's union, which is empowered to negotiate on claimant's behalf. Finally, claimant was aware when he started the union apprenticeship program that he would be required to attend training to participate in the program, and that he would not be paid wages during the union training.

Alternatively, if claimant's one week of training is not considered a voluntary leave of absence, claimant is not eligible for benefits because he cannot establish he is able to and available for work that week. This is because he was attending training during business hours that week and therefore was unavailable. Finally, while claimant was totally unemployed from January 12 to January 18, 2020, he was not considered "temporarily unemployed" as defined by the statute below.

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.

In this case, claimant was not off work because of a plant shutdown, vacation, inventory, or lack of work or other emergency. Therefore, the time off work to attend training does not meet the definition of "temporarily unemployed" and claimant is not exempt from the requirement to be able to and available for work.

In summary, claimant has not established he was available to work from January 12 to January 18, 2020, as is his burden, and therefore he is not eligible for benefits for that week.

DECISION:

The February 4, 2020 (reference 03) unemployment insurance decision is REVERSED. The claimant is not eligible for benefits from January 12 to January 18, 2020, as he was not available for work during that period.

REMAND:

The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn