

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE J OVERMAN
Claimant

B G BRECKE INC
Employer

APPEAL 19A-UI-08136-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

On October 18, 2019, B G Brecke, Inc. (employer) filed an appeal from the October 10, 2019, reference 01, unemployment insurance decision that allowed benefits based upon the determination Jesse J. Overman (claimant) was temporarily unemployed and considered available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on November 6, 2019. The claimant did not answer when called at the number provided and did not participate. The employer participated through Carley Kahout, Cost Accountant. No exhibits were admitted into the record.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work and available for work during the one week ending May 18, 2019?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed with the employer as a Plumber/Pipe Fitter Apprentice. The claimant has been employee since August 24, 2012 and could work for the employer in a non-apprentice capacity. The union sets its apprenticeship training during normal business hours and the employer agrees to allow its employees to attend. The claimant attended his apprenticeship training the week ending September 28, 2019. The employer had work available for the claimant had he not attended the apprentice training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is unavailable for work during the one week ending September 28, 2019.

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)(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 claimant was not available for work during the one week ending September 28, 2019. He attended training required for the apprenticeship program in which he is enrolled. Employer agreed to allow the claimant to attend the training and employ him during his participation in the program. However, it does not require the claimant to attend the training or participate in the program in order to maintain his employment. 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 the one week ending September 28, 2019.

Alternatively, if claimant's one week of training is not considered a voluntary leave of absence, the claimant is not eligible for benefits because he cannot establish he is able to and available for work that week.

While claimant was totally unemployed during the one week ending September 28, 2019, 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, the 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 the claimant is not exempt from the requirement to be able to and available for work.

Iowa Admin. Code r. 871-24.23(5) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

In this case, the claimant was not able to and available for work as he was attending full-time training during the week in question.

In summary, the claimant has not established he was available to work during the one week ending September 28, 2019, as his burden, and therefore he is not eligible for benefits for that week.

DECISION:

The October 10, 2019, reference 01, unemployment insurance decision is reversed. The claimant is not eligible for benefits during the one week ending September 28, 2019, as he was not available for work.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn