

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KEENEN M NOSEK

Claimant

APPEAL NO: 19A-UI-03841-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOWKER MECHANICAL CONTRACTORS

Employer

OC: 11/25/18

Claimant: Respondent (1)

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

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The employer filed an appeal from the May 1, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Kent Nanke, CFO. Susan Reid, payroll, also testified.

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.

ISSUE:

Was the claimant able to and available for work for the week ending April 27, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for employer on October 29, 2018, as a full-time pipefitter apprentice.

Employer's shop is a union shop hiring from the union local for their workers and apprentices. The local union dictates that apprentices hired must be put on a track to become fully certified in their respective fields. The claimant is affiliated with Local Union 125. As part of the apprenticeship program with the local union, the claimant is required to undergo training until he obtains journeyman status.

The employer has an agreement with the union with respect to the apprenticeship program. The union requires the claimant attend the training. The employer requires the claimant to attend the training. For the week ending April 27, 2019, the claimant attended required

apprenticeship training. The 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 the claimant to return to work during the week in question. Rather, when the week was over, the claimant resumed full-time employment effective April 27, 2019, as scheduled by the employer. If the claimant had chosen not to attend the required training, he would eventually be dismissed from the union training program and discharged from employment.

Effective May 31, 2019, the claimant was permanently laid off from employment with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work for the period in question.

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, the claimant was employed as an apprentice worker and enrolled in a mandatory apprenticeship training for the one week period in question. The employer did not schedule the 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, the employer did not schedule the claimant to work and he received no pay from the company. The claimant, however, was expected by the employer to attend the training to retain his employment with the company. If he failed to attend the apprenticeship training, he would be discharged. Because the claimant's training was mandatory to retain employment, his absence from employment cannot be construed as a voluntary leave of absence.

Based on the evidence presented, the administrative law judge concludes the 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. 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 therefore eligible to receive unemployment insurance benefits for the week ending April 27, 2019, provided that he meets all the eligibility requirements.

DECISION:

The representative's unemployment insurance decision dated May 1, 2019, (reference 02) is affirmed. The 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 April 27, 2019, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn