IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

DANE M MASON
Claimant

APPEAL 15A-UI-06039-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANK MILLARD & CO INC
Employer

**OC: 11/02/14
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.39(2) – Department Approved Training (DAT)

STATEMENT OF THE CASE:

The employer filed an appeal from the May 15, 2015, (reference 07) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 6, 2015. Claimant participated. Employer participated through and Diana McCannon, Payroll Manager and was represented Jerry Sander.

ISSUES:

Was the claimant on a short-term layoff or was in he enrolled in DAT training?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is approved for regular recurring DAT training. He has repeatedly over the years attended the training. The agency records show that another decision, reference 06, was issued allowing the claimant benefits pursuant to DAT for the week ending April 25, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that ability to work and availability for work requirement is waived.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 96.4(6)a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of § 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by § 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or § 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

Iowa Admin. Code r. 871-24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be

subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code § 96.4(6).

As long as claimant remains eligible for DAT, the able and available requirement is waived pursuant to 871 IAC 24.39(2). Employer's account shall not be charged for benefits paid during claimant's eligibility for DAT. Accordingly, benefits are allowed and the account of this employer shall not be charged.

DECISION:

The May 15, 2015, reference 07, decision is modified in favor of the appellant. Benefits are allowed. Employer account number 006149 shall not be charged while claimant is in DAT eligible status.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/css