

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JESSE J OVERMAN
Claimant

APPEAL NO. 19A-UI-03707-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

B G BRECKE INC
Employer

OC: 06/17/18
Claimant: Respondent (1)

Iowa Code Section 96.4(3) – Able & Available
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 3, 2019, reference 03, decision that allowed benefits to the claimant beginning April 21, 2019 provided he met all other eligibility requirements. After due notice was issued, a hearing was held on May 24, 2019. Claimant Jesse Overman participated. Jeff Huegel represented the employer. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims (KCCO) and of the benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant was able to work and available for work during the benefit week that ended April 27, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed during the benefit week that ended April 27, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jesse Overman is employed by B.G. Brecke, Inc. as a full-time Plumber Apprentice. Mr. Overman's regular work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. Mr. Overman's hourly wage is \$28.61. Mr. Overman began the employment in 2014 as a full-time Mechanical Helper. In April 2014, Mr. Overman entered into a plumber apprentice program operated by Plumbers and Pipefitters Local 125. B.G. Brecke participates in a collective bargaining agreement with the union local that ties Mr. Overman's wages to his continued participation and progress in the apprenticeship program. If Mr. Overman were to leave the apprentice program prior to completing the program, he would, at minimum, suffer demotion to Mechanical Helper and suffer a substantial decrease in his wages. At worst, he would suffer loss of the employment.

Mr. Overman's participation in the apprenticeship training includes periodic week-long classroom training sessions. During the week of April 21-27, 2019, Mr. Overman participated in apprentice classroom training on a full-time basis. The training hours were 7:15 a.m. to 4:00 p.m., Monday through Friday. Mr. Overman did not request and the employer did not approve a leave of absence. The employer knew about the scheduled training in advance and did not assign any work to Mr. Overman during that week and Mr. Overman did not refuse any work that week. The employer did not pay any wages to Mr. Overman for that week. During the week before and the week after the week-long training, Mr. Overman performed work for the employer on a full-time basis.

Mr. Overman established an additional claim for benefits that was effective May 3, 2019. B.G. Brecke is a base period employer in connection with the claim. Mr. Overman made a weekly claim for the week that ended April 27, 2019 and then discontinued the claim in connection with his return to the full-time employment. Mr. Overman received no benefits for the 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.

The weight of the evidence in the record establishes that Mr. Overman's continued participation in the apprenticeship program, including the periodic week-long training, has been an established condition of his B.G. Brecke employment since 2014. The parties agree that if Mr. Overman were to leave the apprenticeship program he would suffer a demotion, substantial decrease in wages, and potential discharge from the employment. Under those circumstances, Mr. Overman demonstrated his "availability" in reference to the employment by making himself available for and participating the week long job-related training that was an established condition of his employment. Mr. Overman was not on a leave of absence. Because the employer offered no work to Mr. Overman that week and paid no wages to Mr. Overman for that week, Mr. Overman may be deemed temporarily laid off for the week of training. Mr. Overman is eligible for benefits for the week that ended April 27, 2019, provided he meets all other eligibility requirements. Mr. Overman has not received any benefits for the week in question. In the event Mr. Overman satisfies all the eligibility requirements, the employer's account may be charged for benefits for the week that ended April 27, 2019.

DECISION:

The May 3, 2019, reference 03, decision is affirmed. The claimant was able to work, available for work, but temporarily laid off during the week that ended April 27, 2019. The claimant is eligible for benefits for that week provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs