

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVOR A BUTTERBAUGH
Claimant

APPEAL NO. 19A-UI-02749-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOWKER MECHANICAL CONTRACTORS
Employer

OC: 09/09/18
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.23(26)– Same Wages and Hours
Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.7(2)A(2) – Partial Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 29, 2019, reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on April 18, 2019. Claimant participated personally. Employer participated by Kent Nanke and Susan Reid.

ISSUES:

Whether claimant is still employed at the same hours and wages?

Whether claimant is eligible to receive partial benefits?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The claimant currently works for Bowker Mechanical, under the same terms and conditions as contemplated in the original contract of hire. Employer's shop is a union shop hiring. As such they hire 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. Said track, that employer agrees to comply with, dictates among other things that the apprentices must complete hours of work, and outside hours of classes at the union hall. These hours are scheduled by the union and are held during normal work hours for employer.

Claimant was off work for the week beginning 3-24-19 through the benefit week ending 4-6-19 such that he could attend two weeks of classes. Employer knew in advance of claimant's classes.

REASONING AND CONCLUSIONS OF LAW:

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 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 Code § 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.

For the reasons that follow, the administrative law judge concludes the claimant was partially unemployed for the weeks beginning 3-24-19 through the benefit week ending 4-6-19. Initially, at all times relevant, claimant was able and available for work, but was required to attend classes to further his education as per union and employer requirements.

Prior to claimant ever being hired by employer, employer made the decision that they would be a union shop, meaning that they would only have union workers performing their skilled crafts. Employer entered into an agreement with union that they would abide by union regulations. Said regulations included having apprentices periodically attending classes to learn more about their positions. For a couple of years working for employer, claimant had regularly attended these classes.

Employer stated that employees must attend the union classes as the apprentices must make progress towards their union certification. Had claimant not attended the classes, claimant would not have been able to continue with his employment. This creates a situation where the claimant is doing only that which he has done for years, and doing that which is required by employer is akin to a plant shutdown as it relates to claimant alone. He is not allowed to go to work during that period of time. To go to work would put his job in peril as he would not have satisfied requirements of the employer and the union. Given the circumstances, to hold claimant as ineligible to receive benefits runs counter to the agreement reached between claimant, employer, and the union and counter to the stated intent of Iowa Code Chapter 95 as claimant's absence from his job is through no fault of his own. Benefits allowed.

DECISION:

The March 29, 2019, reference 02, decision is affirmed. The claimant was partially unemployed for the two-week time period between March 24, 2019 and April 6, 2019 and benefits are allowed, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn