

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSTY L JOHNSON
Claimant

B G BRECKE INC
Employer

APPEAL 20A-UI-02177-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/05/19
Claimant: Respondent (2)

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. 871-24.22(2) – A&A – Benefit Eligibility Conditions
Iowa Admin. Code r. 871-24.23 – Availability Disqualifications

STATEMENT OF THE CASE:

Employer filed an appeal from the March 9, 2020 (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 21, 2020, at 10:00 a.m. Claimant participated. Employer participated through Stephanie Veach, Payroll Specialist. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant was able to work and available for work during the week ending February 29, 2020.

Whether claimant was totally, partially or temporarily unemployed.

Whether claimant was on an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time with B G Brecke, Inc. as a plumbing apprentice. Claimant began his employment August 24, 2015. Claimant has been in the apprenticeship program with Local 125 Plumbers and Pipefitters since he began his employment. Employer does not require claimant to remain in the apprenticeship program in order to maintain employment.

In order to remain in good standing in the apprenticeship program, claimant must attend week-long classroom training several times throughout the year. Local 125 and employer agree on the class schedule and notify apprentices when the training is scheduled to take place. Employer allows claimant to attend the classroom training.

Claimant attended apprenticeship training on a full-time basis during business hours during the week February 23, 2020 to February 29, 2020. Employer had work available that week if claimant had not been in apprenticeship training.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is unavailable for work for the week ending February 29, 2020.

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.

Claimant was not available for work during the week ending February 29, 2020. Claimant attended training required for the apprenticeship program that he signed up for with his local union. Employer agreed to allow claimant to attend the training and remain employed. However, employer does not require 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 through his union representative. Therefore, it is a period of voluntary unemployment and claimant is ineligible for benefits during the week ending February 29, 2020.

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.

Claimant was not off of work because of a plant shutdown, vacation, inventory or lack of work or other emergency. Therefore, claimant's time off to attend training does not meet the definition of "temporarily unemployed" and claimant is not exempt from the requirement that he be able to and available for work.

Iowa Admin. Code r. 871-24.23(5), (10) 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.

(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.

Claimant was not available for work for the week ending February 29, 2020, because he was attending training full-time and was on a leave of absence. Claimant has not met his burden of proving that he was available for work. Therefore, benefits are denied for the week ending February 29, 2020.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

DECISION:

The March 9, 2020 (reference 04) unemployment insurance decision is reversed. Claimant was not available for work for the week ending February 29, 2020. Benefits are denied for the week ending February 29, 2020.



Adrienne C. Williamson
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April 23, 2020
Decision Dated and Mailed

acw/scn