

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ZACH J SWEENEY
Claimant

APPEAL NO: 19A-UI-03945-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

B G BRECKE INC
Employer

OC: 12/02/18
Claimant: Respondent (1)

Section 96.19(38)a & b – Total and Partial Unemployment
Section 96.4-3 – Able and Available for Work
871 IAC 24.23(26) – Availability Disqualifications Same Hours and Wages
Section 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 9, 2019, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 7, 2019. The claimant participated in the hearing. Carley Kohout, Accounting Specialist, participated in the hearing on behalf of the employer. Official notice was taken of the administrative record, specifically, the claimant's weekly continued claim records.

ISSUE:

The issues are whether the claimant was totally or partially unemployed the week of April 28, 2019 and whether the claimant is able and available for work the week of April 28, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired May 21, 2013. He is employed as a full-time apprentice plumber and pipe fitter. Approximately every six weeks, the claimant does not work for one week at a time so he can attend training class. This training class is required by and set up through the claimant's union. If he fails to attend the class he could be expelled from the union. The claimant's employment with the employer is dependent on his union membership. During the week of April 28, 2019, the claimant attended his training class full-time. Work was available with the employer during the week of March 10, 2019.

The administrative record shows the claimant filed an additional claim April 28, 2019, for one week ending May 4, 2019.

REASONING AND CONCLUSIONS OF LAW:

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

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 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 Admin. Code r. 871-24.22(2)j(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:

(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.

Here the claimant did not work at all the week of April 28, 2019, and therefore was totally unemployed for that week. The question then becomes whether the claimant was off work due to a temporary layoff or on a voluntary leave of absence. In a decision issued by the Employment Appeal Board in hearing number 19B-UI-00595, *Keiser v. RMB Company Inc.*, the board found that the claimant's absence to attend union training was a voluntary leave of absence negotiated with the consent of both parties. In order to support the finding that the training was a voluntary leave of absence, the EAB pointed to the fact that the training was not required in order for the claimant to remain employed. The circumstances in this case can be differentiated from *Keiser* in that the claimant would be separated from his employment if he did not attend the union training. Had the claimant been separated from employment, benefits would likely be denied, as the claimant would have failed to maintain his union status as a condition of employment. This can be compared to a requirement many employers have that employees maintain specific licensing to remain employed. In those cases, the courts have consistently held that failing to meet those requirements can be considered job-related misconduct. *Cook v. Iowa Department of Job Services*, 299 N.W.2d 698 (Iowa 1980), *Galey v. Employment Appeal Bd.*, No. 17-0976 (Iowa Ct App. July 18, 2019).

Because the training was a mandatory condition of continued employment that took the claimant away from his regular paid job duties, it cannot be considered a voluntary leave of absence. Rather, the claimant's temporary separation was the result of the employer's decision not to provide him with work for the week of April 28, 2019, to attend training sponsored by the union as part of the employer's agreement with the union. Because the training was mandatory in

order to maintain employment, the claimant was not on a temporary leave of absence, but was temporarily laid off due to a lack of work. As such, the claimant was able to and available for work the week of April 28, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 9, 2019, reference 03, decision is affirmed. The claimant is able to work and available for work effective April 28, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs