

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENNAN PARKER
Claimant

APPEAL 18A-UI-08399-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUSSMAN CORPORATION
Employer

**OC: 10/01/17
Claimant: Appellant (2)**

Iowa Code section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Admin. Code r. 871-24.23(26) – Same Hours and Wages

STATEMENT OF THE CASE:

The claimant, Brennan Parker, filed a timely appeal from the August 1, 2018, reference 05, decision that denied benefits effective July 8, 2018, because it found claimant was still employed under the same conditions as in the original contract of hire and therefore could not be considered partially unemployed within the meaning of the law. After due notice was issued, a hearing was held on August 30, 2018. Claimant participated and testified. Attorney Edward Parker also participated on behalf of the claimant. Claimant's Exhibit 1 was received into evidence.

ISSUES:

Was claimant able to work and available for work during the benefit week ending July 14, 2018?

Was claimant partially unemployed during the benefit week ending July 14, 2018?

Was claimant employed at the same hours and wages contemplated at the time of hire?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer in November 2016 as a full-time control's apprentice and continues in the full-time employment at this time. During the week of July 7, 2018, claimant participated in week-long apprentice training, for which he received no wages. Claimant was attached to the employer immediately before, during, and immediately after the week of training. Claimant's successful participation in the training was a condition of the employment. During the week of training, claimant did not earn any wages.

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 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. 871-24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

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).

The evidence establishes that claimant was able to work and available for work within the meaning of the law during the benefit week that ended July 14, 2018. During that week, claimant participated in required apprentice training as a condition of continuing in the employment, but received no wages in connection with the apprentice training. Claimant was unemployed within the meaning of the law and is eligible for benefits for the week that ended July 14, 2018, provided he meets all other eligibility requirements.

DECISION:

The August 1, 2018, reference 05, decision is reversed. The claimant is able to work and available for work effective July 8, 2018, and was unemployed during the benefit week ending July 14, 2018. The claimant is eligible for benefits for the week that ending July 14, 2018, provided he meets all other eligibility requirements.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs