

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALTON R JESTER
Claimant

B G BRECKE INC
Employer

APPEAL 19A-UI-03134-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/04/18
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.19(38) – Total and Partial Unemployment
Iowa Admin. Code r. 871-24.23(11) – Leave of Absence

STATEMENT OF THE CASE:

On April 15, 2019, B G Brecke, Inc. (employer) filed an appeal from the April 11, 2019, reference 03, unemployment insurance decision that allowed benefits effective March 24, 2019 based upon the determination Dalton R. Jester (claimant) was temporarily laid off from work and considered able and available for work. After due notice was issued, a telephone conference hearing was held on May 3, 2019. The claimant participated. The employer participated through Payroll Administrator Jeff Huegel. The Claimant's Exhibits A and B were admitted into the record without objection. The administrative law judge took official notice of the legal precedent submitted by the employer.

ISSUES:

Is the claimant totally, partially, or temporarily unemployed?
Is the claimant able to work and available for work effective March 24, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer as a Plumber Apprentice beginning May 11, 2015. The employer is a union shop and requires all employees to belong to the union as a term of employment. The union requires all apprentices to attend training or they will be removed from the program and the union.

The union scheduled apprentice training for the week of March 24, 2019. The employer did not schedule the claimant for work and the claimant attended the training. The claimant would have lost his job had he not attended the training to remain in good standing in the union apprentice program.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was temporarily unemployed for the week of March 24, 2019. Benefits are allowed.

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)(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.

Here, the claimant did not work at all the week of March 24, 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. The employer referenced a decision issued by the Employment Appeal Board in hearing number 19B-UI-00595, *Keiser v. RMB Company Inc.* In that decision the board found that 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 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 March 24, 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 a result, the requirements of able to and available for work are waived. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The April 11, 2019, reference 03, unemployment insurance decision is affirmed. The claimant was temporarily unemployed for the week of March 24, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn