

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUSTY L JOHNSON
Claimant

B G BRECKE INC
Employer

APPEAL 20A-UI-01580-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/05/19
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

B G Brecke (employer) appealed a representative's February 18, 2020 decision (reference 03) that concluded Rusty Johnson (claimant) was eligible to receive unemployment insurance benefits as of February 2, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2020. The claimant participated personally. The employer participated by Stephanie Veach. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant is able and available for the weeks ending February 8 and 29, 2020, and whether the claimant is totally or partially unemployed effective February 8 and 29, 2020.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired August 24, 2015, as a full-time helper. On March 21, 2016, the claimant became a plumber pipefitter apprentice. The employer and the claimant's union, Local 125, have an agreement that members in the apprentice program will be allowed to attend training classes six to eight weeks per year, rather than working their regular job duties and hours. Employees in the apprentice program do not choose when or if they attend classes. An employee who does not attend the regular classes will be expelled from the apprenticeship program. Removal from the program would result in the employee's demotion or termination.

For the weeks ending February 8 and 29, 2020, the claimant attended apprenticeship training classes. During the week of training, the employer did not assign the claimant any work and the claimant did not refuse any work. He was not paid wages from the employer. The claimant filed for unemployment insurance benefits for the weeks ending February 8 and 29, 2020, and did

not report any wages. Work would have been available for the claimant had the claimant not been required to attend training. The claimant was not given a choice about whether to work or attend the training.

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 period of time 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)(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.

The evidence shows that the claimant was able and available for work during the benefit weeks ending February 8 and 29, 2020. The claimant was absent from work that week to attend employment-related training. The employer did not assign the claimant any work and the claimant did not refuse any work. The training was an unpaid mandatory condition of continued employment. It cannot be considered a voluntary leave of absence. The claimant's separation for the weeks ending February 8 and 29, 2020, to attend training was a result of an agreement between the union and the employer. No work was provided by the employer and the training was mandatory to maintain employment. The claimant was temporarily laid off due to lack of work. The claimant was able and available for work for the weeks ending February 8 and 29, 2020. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 18, 2020, decision (reference 03) is affirmed. The claimant was able and available for the weeks ending February 8 and 29, 2019. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn