

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DYLAN J WINDFIELD**  
Claimant

**APPEAL NO: 19A-UI-02407-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B G BRECKE INC**  
Employer

**OC: 10/14/18**

**Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available for Work

**STATEMENT OF THE CASE:**

B G Brecke, Inc, the employer filed a timely appeal from a representative's unemployment insurance decision dated March 14, 2019, (reference 01) which held the claimant, Dylan J. Windfield eligible for unemployment insurance benefits beginning February 24, 2019, finding that the claimant was able and available for work, still employed by the company and that his unemployment was due to a short-term layoff. After due notice was provided, a telephone hearing was held on April 5, 2019. Claimant participated. Employer participated by Mr. Jeff Huegal, Hearing Administrator. Employer's Exhibit 1 and Department Exhibit D-1 were admitted into the hearing record.

**ISSUE:**

The issue is whether Dylan Windfield meets the able and available requirement of the law during the week period between Monday, February 25, 2019 and Friday, March 1, 2019.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having considered the evidence in the record, the administrative law judge finds Dylan J. Windfield began employment with B G Brecke, Inc. on April 17, 2017 and continues to be employed by the company at the time of hearing. Mr. Windfield is employed as a full-time apprentice plumber and pipe fitter and is paid by the hour. His immediate supervisor is Mr. Rick Rudd.

Mr. Windfield opened a claim for unemployment insurance benefits for a one-week period beginning Monday, February 25, 2019 through Friday, March 1, 2019.

During that week, Mr. Windfield was not scheduled to work by B G Brecke, Inc. and was required by the employer to attend a one-week plumbing and pipe fitters apprenticeship school that was being conducted by the union. Per the bargaining agreement, in effect between the company and the union, B G Brecke, Inc. did not schedule Mr. Windfield, who is an apprenticeship trainee to perform services for the company that week and did not pay him for the week of apprenticeship training that had been scheduled and required by the agreement between the union and B G Brecke, Inc.

Under the terms of the bargaining agreement, the company does not schedule work for the apprenticeship employees who are to attend the training, and the apprenticeship employees are subject to losing their jobs with the company for non-attendance.

B G Brecke, Inc. did not attempt to recall Mr. Windfield to return to work during the week in question, and when the weeks apprenticeship training was over, the company resumed scheduling Mr. Windfield for work. The employer expected Mr. Windfield to return to work and did so. Because of the short duration of the time work was not available and the employer's intent to re-employ him, Mr. Windfield was considered to be attached to the employer and was not required to seek new employment with other prospective employers.

It is the employer's position that because the claimant was engaged in apprenticeship training, he was not "able and available" for work and therefore ineligible to receive unemployment insurance benefits during the week in question.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Code § 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 Code § 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".

In the case at hand, the claimant was employed as an apprentice worker and enrolled in a mandatory apprenticeship training and was not scheduled by the employer to work for the one week period in question, the employer did not schedule Mr. Windfield to work during the one week training based upon collective bargaining agreement in effect between the company and the union.

Under the terms of the agreement, the company did not schedule Mr. Windfield to work and he received no pay from the company. Mr. Windfield however, was expected by the employer to attend the training to retain his employment with the company. No work was scheduled for Mr. Windfield for the one week period. The intent was not done to prejudice Mr. Windfield in his employment relationship with the company, but to enhance Mr. Windfield's value to the company because the training was directly related to his employment.

Mr. Windfield was physically able to work and was available for work but not scheduled or recalled to work by the company during the one week period. Mr. Windfield was not required to look for new work during the one week period because he remained attached to B G Brecke, Inc. and was to return back to work the following week. The claimant's one week suspension of work was initiated by the employer and constituted a short-term lay-off. The administrative law judge concludes that the evidence establishes Mr. Windfield has satisfied the able and available requirements of the law and is eligible to receive unemployment insurance benefits provided that he meets all the eligibility requirements.

**DECISION:**

The representative's unemployment insurance decision dated March 14, 2019, reference 01 is affirmed. Claimant is on a short-term layoff and is considered to be able and available for work during the layoff.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn