

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TRACY R DANES**

Claimant

**APPEAL NO. 19A-UI-02821-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRANK MILLARD & CO INC**

Employer

**OC: 06/24/18**

**Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38)(b) – Partially Unemployed  
Iowa Code Section 96.19(38)(c) – Temporarily Unemployed  
Iowa Code section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 25, 2019, reference 02, decision that allowed benefits to the claimant effective February 24, 2019 provided he met all other eligibility requirements. After due notice was issued, a hearing was held on April 24, 2019. Claimant Tracy Danes did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Robin Moore of Employers Unity represented the employer and presented testimony through Diana McCannon. Exhibits 1 and 3 and Department Exhibits D-1, D-2 and d-3 were received into evidence.

**ISSUES:**

Whether the claimant was able to work and available for work during the benefit week that ended March 2, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed during the benefit week that ended March 2, 2019.

Whether this employer's account may be charged for benefits paid to the claimant for the week that ended March 2, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracy Danes established an additional claim for benefits that was effective February 24, 2019. The additional claim was based on an original claim that was effective June 24, 2018. Frank Millard & Company is not a base period employer in connection with the claim year that began for Mr. Danes on June 24, 2018. Mr. Danes made a weekly claim for the week that ended March 2, 2019 and then discontinued his claim for benefits. Mr. Danes received \$455.00 in benefits for the week that ended March 2, 2019. Since April 2018, Mr. Danes has been employed by Frank Millard & Company, Inc. as a full-time plumber apprentice. Mr. Danes' work hours are 8:00 a.m. to 4:30 p.m.

At the time Mr. Danes began the employment, he was substantially along in a multiple year apprentice program. The employer hired Mr. Danes with the mutual understanding that Mr. Danes would continue in the apprenticeship program. Successful completion of the apprenticeship would lead to Mr. Danes attaining journeyman plumber status and provide the employer with a journeyman plumber who can work without supervision. The wage, health care insurance benefit and other benefits the employer provides to Mr. Danes are all tied to Mr. Danes maintaining successful progress in the apprenticeship program. Indeed, the employer would terminate the employment if Mr. Danes quit or was dismissed from the apprenticeship program.

During the week of February 24, 2019 through March 2, 2019, Mr. Danes participated in week-long classroom training through a union local as part of his ongoing participation in the apprenticeship program. To facilitate Mr. Danes' participation in the training, the employer did not assign other work to Mr. Danes that week. The training directly related to Mr. Danes' work duties. The employer did not pay wages to Mr. Danes for the week of training. The union local provided a \$200.00 stipend.

### **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".

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).

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 Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

Whether one relies upon a theory of partial unemployment or temporary unemployment, Mr. Danes is eligible for benefits for the benefit week that ended March 2, 2019, provided he meets all other eligibility requirements. Under the partial unemployment analysis, Mr. Danes worked fewer (zero) wage-generating hours during the week of training and thereby earned less than his weekly benefit amount plus \$15.00. Under the temporary unemployment analysis, the employer elected not to assign work to Mr. Danes or pay him wages during the week of the training, which left Mr. Danes temporarily unemployed. Mr. Danes demonstrated his ability to work and his availability for work through his participation in the job-related training.

Because Frank Millard & Company is not a base period employer for purpose of Mr. Danes' current claim year, that employer's account has not and will not be charged for the benefits paid to Mr. Danes for the week that ended March 2, 2019.

**DECISION:**

The March 25, 2019, reference 02, decision is modified as follows. The claimant was able to work and available for work during the benefit week that ended March 2, 2019. The claimant was partially unemployed and temporarily unemployed that week. The claimant is eligible for benefits for the week that ended March 2, 2019, provided he meets all other eligibility requirements. This employer's account shall not be charged for the benefits paid to the claimant for the week that ended March 2, 2019.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs