

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SEBASTIAN L CAREY**

Claimant

**APPEAL NO. 19A-UI-03228-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINGER CONTRACTING CO**

Employer

**OC: 08/26/18**

**Claimant: Respondent (2R)**

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 April 16, 2019, reference 02, decision that allowed benefits to the claimant beginning March 24, 2019 provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant was able to work, available for work, and on a short-term layoff. After due notice was issued, a hearing was held on May 8, 2019. Claimant Sebastian Carey participated. Attorney Patrick Curran represented the employer and presented testimony through Mandy Thrasher. The administrative law judge took official notice of the following Agency administrative records: KCCO and DBRO.

**ISSUES:**

Whether the claimant has been able to work and available for work during the benefit week that ended March 30, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed during the benefit week that ended March 30, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the benefit week that ended March 30, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sebastian Carey is employed by Winger Contracting Company as a full-time Pipe Refrigeration Apprentice. Mr. Carey's regular work hours are 7:00 a.m. to 3:30 p.m. Mr. Carey's hourly wage is \$16.68. Mr. Carey began the employment in 2017 as a full-time laborer/helper. In July 2018, Mr. Carey elected to enter a five-year pipe refrigeration apprentice program offered through a trade union. During the week of March 24-30, 2019, Mr. Carey elected to participate in apprentice training and did not perform work for the employer, though the employer had full-time work available for him.

Mr. Carey established an additional claim for benefits that was effective March 24, 2019. Mr. Carey made a weekly claim for the week that ended March 30, 2019 and then discontinued his claim in connection with his return to the full-time employment. Mr. Carey received \$335.00 in unemployment insurance benefits for the benefit week that ended March 30, 2019. Winger Contracting is a base period employer in connection with the claim.

### **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 Admin. Code r. 871-24.23(10) provides:

(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.

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.

The Iowa Employment Appeal Board exercises jurisdiction over appeals filed from decisions entered by the administrative law judges in the Iowa Workforce Development Unemployment Insurance Bureau. The Employment Appeal Board ruled that an employee absent from the workplace to participate in apprentice training under circumstances similar to those present in this case was on a leave of absence, not available for work within the meaning of law, not partially unemployed, not temporarily unemployed, and not eligible for benefits for the relevant period. See *Henderson v. Winger Contracting Company*, Hearing Number 19B-01667. The Employment Appeal Board's approach provides strong persuasive authority for how the administrative law judge should analyze the availability issue and related issues in this case. Accordingly, the administrative law judge concludes that Mr. Carey was on a leave of absence and not available for work within the meaning of the law during the week that ended March 30, 2019. During that week, Mr. Carey was voluntarily absent from the Winger employment to participate in voluntary apprentice training. In addition to not being available for work within the meaning of the law, Mr. Carey cannot be deemed partially and/or temporarily unemployed that week. Benefits are denied for the benefit week that ended March 30, 2019. The employer's account will not be charged.

#### **DECISION:**

The April 16, 2019, reference 02, decision is reversed. The claimant was not available for work within the meaning of the law during the benefit week that ended March 30, 2019, was not on a temporary layoff, and is not eligible for benefits for that week. The employer's account shall not be charged for benefits paid to the claimant for the week that ended March 30, 2019.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the \$335.00 in benefits the claimant received for the week that ended March 30, 2019.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs