

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KYLE T AYER
Claimant

APPEAL NO: 19A-UI-02668-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO
Employer

OC: 03/17/19
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The employer filed an appeal from the March 27, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 17, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Patrick F. Curran, attorney at law. Mandy Thrasher, payroll, testified for the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant able to work and available for work the week ending March 23, 2019?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 5, 2013, as a full-time pipe-fitter apprentice. Claimant is affiliated with Local Union 125. The claimant was not required to be in the apprenticeship program to be employed.

As part of the apprenticeship program with the local union, claimant is required to undergo training until he obtains journeyman status. The union requires claimant attend the training. Employer does not require claimant to attend the training, but allows claimant to take a short-term leave of absence to attend the training. Work was available to claimant during the week ending March 23, 2019.

Claimant was in full-time apprenticeship training during the one week ending March 23, 2019. Employer does not pay claimant wages for the time he is in training. The union pays claimant a stipend. He made a weekly continued claim for unemployment insurance benefits for the week ending March 23, 2019. Claimant returned to work on Monday, March 25, 2019 and continues to work full-time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was unavailable for work during the one week ending March 23, 2019.

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. 871-24.22(2)j(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 administrative law judge concludes claimant was not available for work during the one week ending March 23, 2019. Claimant informed employer he would be absent to attend training. Employer agreed to allow claimant to attend the training without pay and return to work when he was done. The training was not mandated by the employer. The leave of absence for training was negotiated with the consent of both the employer and employee, so it is deemed a period of voluntary unemployment and claimant is ineligible for benefits during the one week ending March 23, 2019.

Iowa Admin. Code r. 871-24.23(23) provides: Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work. (23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Effective March 24, 2019, claimant is ineligible for unemployment because he is performing work full-time.

REMAND: The issue of whether the claimant was overpaid benefits for the week ending March 23, 2019 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The March 27, 2019, (reference 01) decision is reversed. The claimant is ineligible for benefits for the week ending March 23, 2019 due to a leave of absence. Effective March 24, 2019, the claimant is ineligible for benefits due to full-time employment. **REMAND:** The issue of whether the claimant was overpaid benefits for the week ending March 23, 2019 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn