

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE A DORNATH

Claimant

APPEAL 20A-UI-01863-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO

Employer

OC: 10/06/19

Claimant: Respondent (1)

Iowa Code § 96.19(38)a & b – Total and Partial Unemployment

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.23(26) – Availability Disqualifications Same Hours and Wages

Iowa Code § 96.7(2)a(2) – Same Base Period Employment

STATEMENT OF THE CASE:

Employer filed an appeal from the February 25, 2020 (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 17, 2020, at 9:00 a.m. Claimant participated with his union representative, Patrick Wells. Employer participated through its attorney, Patrick Curran. Employer's witness was Mandy Thrasher, Payroll. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant was totally, partially or temporarily unemployed.

Whether claimant was able to work and available for work.

Whether claimant was employed at the same wages and hours.

Whether employer's account is subject to charge.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Winger Contracting, Co. on October 19, 2019. Claimant is currently employed full-time as an apprentice electrician. Claimant is employed with Winger Contracting, Co. through a contract with a union. The employer's contract with the union determines whether claimant is at work or in training. Claimant must attend union-sponsored training to maintain membership in the union; claimant must be a union member to maintain employment with Winger Contracting, Co. as an apprentice electrician.

Claimant attended union-sponsored training the week of February 3, 2020. Claimant received a stipend from employer for attending training. Claimant did not report any wages or income for the week of February 3, 2020. Employer had work available for claimant the week of February 3, 2020, if claimant had not attended training. Claimant remains employed by Winger Contracting, Co.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work for the period 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. 871-24.23(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 claimant did not work the week of February 3, 2020 and, therefore, was totally unemployed for that week. Claimant was absent from work to attend union-sponsored training. Because the training is required to maintain membership in the union and union membership is required to maintain employment as an apprentice electrician with Winger Contracting, Co., the union training was a mandatory condition of claimant's continued employment and cannot be considered a voluntary leave of absence. Claimant's absence was a temporary separation due to scheduled training per employer's agreement with the union. Therefore, claimant was temporarily laid off due to a lack of work. As such, the requirement that claimant be able to and available for work is waived. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The February 25, 2020 (reference 04) unemployment insurance decision is affirmed. Claimant was temporarily laid off; the requirement that claimant be able to and available for work is waived. Benefits are allowed provided claimant is otherwise eligible.



Adrienne C. Williamson
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March 30, 2020
Decision Dated and Mailed

acw/scn