

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TRISTON A SCHMIDT
Claimant

APPEAL NO. 19A-UI-03359-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STICKLEY ELECTRIC SERVICE INC
Employer

OC: 03/17/19
Claimant: Appellant (1)

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:

Triston Schmidt filed a timely appeal from the April 10, 2019, reference 01, decision that denied benefits for the benefit week that ended March 23, 2019, based on the deputy's conclusion that Mr. Schmidt was not available for work during the week in question. After due notice was issued, a hearing was held on May 10, 2019. Mr. Schmidt participated. Mary Stickley represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency's administrative records: KCCO and DBRO.

ISSUES:

Whether the claimant was available for work within the meaning of the law during the benefit week that ended March 23, 2019.

Whether the claimant was partially and/or temporarily laid off during the benefit week that ended March 23, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Triston Schmidt is employed by Stickley Electric Service, Inc. as a full-time Apprentice Electrician. Duane Stickley, the business owner, is Mr. Schmidt's supervisor. Mr. Schmidt's regular work hours are 7:30 a.m. to 4:00 p.m., Monday through Friday. Mr. Schmidt's hourly wage is \$11.25. Mr. Schmidt began the employment in April 2017 as a laborer. Upon Mr. Stickley's suggestion Mr. Schmidt voluntarily entered the apprentice program run by Associate Builders & Contractors in the Spring of 2019. The apprentice program is not affiliated with a trade union. Neither Mr. Schmidt's employment nor any aspect of the employment is contingent upon his participation in the apprenticeship program. During the week that ended March 23, 2019, Mr. Schmidt was not available to perform work for the employer because he was participating in week long apprentice training.

Mr. Schmidt established an original claim for benefits that was effective March 17, 2019, made a weekly claim for the week that ended March 23, 2019, and then discontinued his claim in connection with his return to the full-time employment. Stickley Electric 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 similar circumstances 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. The April 10, 2019, reference 01, decision from which Mr. Schmidt appealed reflects Iowa Workforce Development's decision as an agency to follow the Employment Appeal Board's interpretation of the applicable law. Under the circumstances, 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. Schmidt was on a leave of absence and not available for work within the meaning of the law during the week that ended March 23, 2019. During that week, Mr. Schmidt took time away from the employment to participate in voluntary apprentice training that was not a condition of his employment. The employer had full-time work for Mr. Schmidt, but Mr. Schmidt was unavailable for that work. In addition to not being available for work within the meaning of the law, Mr. Schmidt cannot be deemed partially and/or temporarily unemployed that week. Benefits are denied for the benefit week that ended March 23, 2019. The employer's account will not be charged.

DECISION:

The April 10, 2019, reference 01, decision is affirmed. The claimant was not available for work within the meaning of the law during the benefit week that ended March 23, 2019 and is not eligible for benefits for that week.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs