

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAYNE M JOHNSTON
Claimant

APPEAL NO. 19A-UI-01148-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO
Employer

OC: 08/19/18
Claimant: Respondent (5)

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 February 4, 2019, reference 01, decision that allowed benefits to the claimant effective January 27, 2019, provided he was otherwise eligible, based on the deputy's conclusion that Mr. Johnston was able and available for work, but on a short-term layoff. After due notice was issued, a hearing was held on February 25, 2019. Mr. Johnston participated personally and was represented by attorney David Stuckel. Attorney Patrick Curran represented the employer and presented testimony through Mandy Thrasher. Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since January 27, 2019.

Whether the claimant has been partially unemployed since January 27, 2019.

Whether the claimant has been temporarily unemployed since January 27, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning January 27, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Layne Johnston is employed by Winger Contracting Company as a full-time Sheet Metal Apprentice. Mr. Johnston's regular work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. Mr. Johnston's hourly wage is \$15.02. Mr. Johnston began the employment in January 2017 as a Sheet Metal Tradesman. At the time of hire, the employer advised Mr. Johnston that the employer operated a "union shop" and that once Mr. Johnston had worked 600 hours for the employer he should apply to the sheet metal apprenticeship program. In June 2018, Mr. Johnston was accepted into the five-year apprenticeship program. Mr. Johnston's participation in the apprenticeship training includes periodic week-long classroom training sessions at the union local training center. The employer contributes to the cost of the training

pursuant to a collective bargaining agreement with the union local. The employer reports Mr. Johnston's hours worked to the union local so that the hours may be counted toward the apprenticeship program's requirements. Mr. Johnston's hourly wage and employer-sponsored benefits are tied to Mr. Johnston's progress in the apprenticeship program. The employer directly benefits from the training Mr. Johnston receives through the apprenticeship program.

During the week of January 27, 2019 through February 2, 2019, Mr. Johnston participated in apprentice classroom training on a full-time basis. The training hours were 7:30 a.m. to 4:00 p.m., Monday through Friday. Mr. Johnston did not request and the employer did not approve a leave of absence. The employer did not assign any work to Mr. Johnston during that week and Mr. Johnston did not refuse any work that week. The employer did not pay any wages to Mr. Johnston for that week. During the week before and the week after the week-long training, Mr. Johnston performed work for the employer on a full-time basis.

Mr. Johnston established an original claim for benefits that was effective August 19, 2018 and an additional claim for benefits that was effective January 27, 2019. Winger Contracting is the sole base period employer in connection with the claim year. Mr. Johnston received \$262.00 in unemployment insurance benefits for the benefit week that ended February 2, 2019.

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.

The weight of the evidence in the record establishes that Mr. Johnston was able to work and available for work during the benefit week that ended February 2, 2019. Mr. Johnston demonstrated this by making himself available for the employment-related training that week. In addition, the employer did not assign, and Mr. Johnston did not refuse any work that week.

Whether one relies upon a theory of partial unemployment or temporary unemployment, Mr. Johnston is eligible for benefits for the benefit week that ended February 2, 2019, provided he meets all other eligibility requirements. Under the partial unemployment analysis, Mr. Johnston 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. Johnston or pay him wages during the week of the training, which left Mr. Johnston temporarily unemployed. Based on this employment-related situation, the employer's account may be assessed for the benefits paid to the claimant for the week that ended February 2, 2019.

DECISION:

The February 4, 2019, reference 01, decision is modified as follows. The claimant was able to work and available for work during the week that ended February 2, 2019. The claimant met the requirements of partial unemployment and temporary unemployment during that week. The claimant is eligible for benefits for the week that ended February 2, 2019, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs