

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DOMINIK J SHAKESPEARE**  
Claimant

**B G BRECKE INC**  
Employer

**APPEAL NO. 19A-UI-08588-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available  
Iowa Admin. Code ch. 871 r. 24.23(10) – Leave of Absence  
Iowa Code § 96.19(38) – Partial and Temporary Unemployment

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 28, 2019 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on November 25, 2019. Claimant participated personally. Employer participated by Carley Kohout.

**ISSUES:**

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

Whether claimant is partially or temporarily unemployed?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works as a pipefitting apprentice for employer. Claimant was hired by employer on July 22, 2019 and continues to work in that position at this time. Prior to claimant's being hired by employer, he'd previously been an apprentice pipefitter for another construction company.

Claimant read into the record a portion of the union contract that stated claimant would not be allowed to work if the work interfered with classes scheduled as a part of apprenticeship training. Employer stated that claimant could not have continued with the apprenticeship program if he chose not to attend the classes. In turn, claimant would have his pay reduced but could still have some sort of employment.

The week of October 6-12, 2019 claimant attended classes rather than his work. Employer and the union agreed to this training schedule at the beginning of the year. Claimant argued that he'd received pay over the past number of years when he'd been in training, and that

unemployment pay stopped recently with claimant doing nothing different than he'd done in the past.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

In this matter, claimant, through his union representatives, negotiated that claimant would be requesting and the employer would be granting periods of time when claimant would be deemed to be on an approved leave of absence such that claimant could attend training. As claimant had requested this leave of absence, and employer agreed to said leave, claimant is not eligible to receive benefits during the period of October 6-12, 2019.

**DECISION:**

The decision of the representative dated October 28, 2019, reference 03 is affirmed. Claimant is not eligible to receive unemployment insurance benefits during the period of October 6-12, 2019.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn