

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRADLEY J HENDERSON
Claimant

APPEAL NO. 19A-UI-01667-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO
Employer

OC: 12/16/18
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 22, 2019, reference 02, decision that allowed benefits to the claimant effective February 10, 2019 provided he was otherwise eligible, based on the deputy's conclusion that the claimant was able to work, available for work, but temporarily laid off. After due notice was issued, a hearing was held on March 12, 2019. Claimant Bradley Henderson participated. 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 was able to work and available for work within the meaning of the law during the week of February 10-16, 2019.

Whether the claimant was partially unemployed and/or temporarily unemployed during the week of February 10-16, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the week of February 10-16, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bradley Henderson is employed by Winger Contracting Company as a full-time Refrigeration Service Technician Apprentice. Mr. Henderson's regular work hours are 7:00 a.m. to 3:30 p.m., Monday through Friday. Mr. Henderson hourly wage is \$26.17. Mr. Henderson began the employment in March 2018 as a full-time Refrigeration Service Technician Apprentice. At the time of hire, Mr. Henderson was half-way through his second year of the four to five-year Refrigeration Service Technician Apprentice program. Mr. Henderson accepted the Winger employment and the employer hired Mr. Henderson with the mutual understanding that Mr. Henderson would continue to progress in the apprentice program. In other words, Mr. Henderson's continued participation and progress in the apprentice program was an established condition of the employment from the start of the employment. The skills Mr. Henderson gains from participating in the apprentice program relate to the Winger employment and benefit both Mr. Henderson and the employer. Mr. Henderson'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. Mr. Henderson's hourly wage and employer-sponsored benefits are tied to Mr. Henderson's progress in the apprenticeship program.

During the week of February 10-16, 2019, Mr. Henderson participated in apprentice classroom training on a full-time basis. The training hours were 7:15 a.m. to 4:00 p.m., Monday through Friday. Mr. Henderson did not request and the employer did not approve a leave of absence. The employer did not assign any work to Mr. Henderson during that week and Mr. Henderson did not refuse any work that week. The employer did not pay any wages to Mr. Henderson for that week. However, the union local provided Mr. Henderson with a \$200.00 stipend for the week. During the week before and the week after the week-long training, Mr. Henderson performed work for the employer on a full-time basis.

Mr. Henderson established an original claim for benefits that was effective December 16, 2018 and an additional claim for benefits that was effective February 10, 2019. Winger Contracting Company is a base period employer in connection with the claim. Mr. Henderson received \$467.00 in unemployment insurance benefits for the benefit week that ended February 16, 2019. Mr. Henderson then discontinued his 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".

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.

Mr. Henderson demonstrated his ability to work and his availability for work during the week that ended February 16, 2019 by participating in the work-related training that had been an established condition of his employment from the start of the employment. Whether one relies upon a theory of partial unemployment or temporary unemployment, Mr. Henderson is eligible for benefits for the benefit week that ended February 16, 2019, provided he meets all other eligibility requirements. Under the partial unemployment analysis, Mr. Henderson worked fewer (zero) wage-generating hours during the week of training and thereby earned less than his weekly benefit amount plus \$15.00. The \$200.00 union stipend did not prevent Mr. Henderson from being partially unemployed within the meaning of the law. Under the temporary unemployment analysis, the employer elected not to assign work to Mr. Henderson or pay him wages during the week of the training, which left Mr. Henderson 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 16, 2019.

DECISION:

The February 22, 2019, reference 02, decision is modified as follows. The claimant was able to work and available for work within the meaning of the law during the benefit week that ended February 16, 2019. The claimant was partially unemployed and temporarily unemployed during the benefit week that ended February 16, 2019. The claimant is eligible for benefits for the benefit week that ended February 16, 2019, provided he meets all other eligibility requirements. The employer's account may be assessed for benefits paid to the claimant for the benefit week that ended February 16, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs