

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSH J SMITH**  
Claimant

**APPEAL NO: 19A-UI-02899-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINGER CONTRACTING CO**  
Employer

**OC: 03/10/19**  
**Claimant: Respondent (4)**

Section 96.19(38)a & b – Total and Partial Unemployment  
Section 96.4-3 – Able and Available for Work  
871 IAC 24.23(26) – Same Hours and Wages  
Section 96.7(2)a(2) – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 4, 2019, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 25, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Mandy Thrasher, Payroll, participated in the hearing on behalf of the employer with Corporate Counsel Patrick Curran.

**ISSUE:**

The issues are whether the claimant is totally or partially unemployed the two weeks ending March 23, 2019, and whether he was able and available for work the two weeks ending March 23, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a full-time millwright apprentice for Winger Contracting February 25, 2013. The claimant did not work the two weeks ending March 23, 2019, because he was attending a training class. The training class is required by and set up through the claimant's union. If the claimant fails to attend the class he could be expelled from the union. The claimant's employment with the employer is dependent on his union membership as he cannot be a millwright apprentice without being a union member. During the two weeks ending March 23, 2019, the claimant attended his training class full-time. Work was available with the employer during the two weeks ending March 23, 2019.

The administrative record shows that the claimant filed a claim with an effective date of March 10, 2019. The claimant did not file a weekly continued claim to seek unemployment insurance benefits for that week or any subsequent week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the issues are moot.

Iowa Code § 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 § 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 Code section 96.6(1) provides:

96.6 Filing – determination – appeal

1. *Filing*. Claims for benefits shall be made in accordance with such regulations as the department may practice.

In order to be eligible for weekly benefits, the claimant must file an online web application claim. Iowa Admin. Code r. 871-24.2(1)g. The law no longer allows for an administrative law judge to grant retroactive benefits provided the claimant demonstrates good cause. Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot.

*Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent.” *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983).

In this case the claimant did not file a weekly claim for benefits for the two weeks ending March 23, 2019 that he was in training. As there is no longer any ability under Iowa law to receive retroactive benefits, the claimant has missed his opportunity to seek benefits for those two weeks. Therefore, there is no live case or controversy before the Appeals Bureau. It does not matter whether the claimant was available or whether he was unemployed the two weeks he was in training because he did not seek benefits for those two weeks. The issues of whether he was totally or partially unemployed for the two weeks ending March 23, 2019, and whether he was available for work effective the two weeks ending March 23, 2019, are moot.

**DECISION:**

The April 4, 2019, reference 01, decision is modified in favor of the employer/appellant. The issues of whether the claimant was totally or partially unemployed effective the two weeks ending March 23, 2019, are moot.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn