

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTIN C UMSTEAD
Claimant

APPEAL NO. 19A-UI-05667-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO
Employer

OC: 01/06/19
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 15, 2019 reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on August 16, 2019. Employer participated by Mike Smith.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant didn't participate in fact finding in this matter, all findings of fact are derived from employer's testimony. Claimant was hired by employer as an apprentice plumber on February 27, 2019. As an apprentice, claimant must occasionally attend classes arranged through his local union. Claimant told employer that he would need to be absent from work the week of June 24-28, 2019 to attend training. Employer obliged with claimant's request and did not schedule him for work that week.

Employer stated that claimant's job was not dependent on his attending the union training. Employer additionally stated that claimant would still have a job if he were not in the union.

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. 871-24.22(2)(1)(2)(3) provides:

Benefit 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Code section 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.

Claimant was not at work for the period of June 24-28, 2019. Claimant requested these dates off from work such that he could attend training. During the dates when claimant was at training he was not able and available for his work. At the time there was ongoing work available for him, whether or not claimant was continuing as a union apprentice. As such, claimant is seen to be the recipient of a leave of absence, and has not been temporarily unemployed. As such, claimant is not eligible for the receipt of unemployment benefits for the week of June 24-28, 2019.

DECISION:

The decision of the representative dated July 15, 2019, reference 01 is reversed. Claimant is not eligible to receive unemployment insurance benefits for the week of June 23-29, 2019.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs