

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE K PILLARD
Claimant

APPEAL NO: 19A-UI-02567-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

B G BRECKE INC
Employer

OC: 10/14/18

Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available for Work
Iowa Code § 96.7(2)a2 – Employer Contributions

STATEMENT OF THE CASE:

B G Brecke, Inc., the employer filed a timely appeal from a representative's unemployment insurance decision dated March 20, 2019, (reference 02) which concluded that the claimant Kyle Pillard was still employed by B G Brecke, Inc., that the claimant was on short term lay-off and eligible to receive unemployment insurance benefits, and meets the able and available requirements of the law. After due notice was provided, a telephone hearing was held on April 11, 2019. Claimant participated. Employer participated by Mr. Jeff Hugel, Payroll Administrator. Employer's Exhibits A and B were admitted into the hearing record. Department Exhibit D-1, the administrative file was admitted into the hearing record.

ISSUES:

The first issue is whether the claimant, Kyle Pillard, was able and available for work within the meaning of the Iowa Employment Security law.

The second issue is whether the claimant was temporarily unemployed during the benefit week ending March 9, 2019.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Kyle Pillard began employment with B G Brecke, Inc. on April 19, 2016. Mr. Pillard was employed to work as a full-time heating/air conditioning/refrigeration technician and was paid by the hour.

Mr. Pillard continued to be employed by the company at the time of hearing. Mr. Pillard opened a claim for unemployment insurance benefits with an effective date of March 3, 2019, claiming benefits on Monday, February 4, 2019 through Friday, March 8, 2019. Mr. Pillard had not been scheduled to work by B G Brecke, Inc. that week and received no pay from the company. Mr. Pillard attended one-week plumbing and pipe fitting apprenticeship training that was being conducted by Local 125 of Plumbers and Pipe Fitters union. The claimant's attendance at training was part of the contractual agreement between the company and the union, under the bargaining agreement in effect. As a condition of his employment, Mr. Pillard is required to attend apprenticeship training until he obtains journeyman's status in his job position. Mr. Pillard is subject to discharge if he does not attend the mandatory apprenticeship training.

Per the bargaining agreement, the union notifies the B G Brecke, Inc. Company of training dates in advance and the claimant is not scheduled to work or paid. The company made no attempts to recall Mr. Pillard back to work that week and the claimant received no notice from the employer that work was available to him or that the apprenticeship training would no longer be required.

The employer has followed this practice for a number of years under the provisions of the bargaining agreement. The employer routinely schedules apprenticeship trainee workers to return to their work after the week of apprenticeship training is completed.

Mr. Pillard did not look for other employment during the week because he continued to be attached to this employer and would be recalled to work when the one week's training ended. Mr. Pillard did not request and was not offered a leave of absence. The claimant was not provided any notice from the employer that work would be available to him at the plant if he wanted to work during the one week apprenticeship training period.

It is the employer's position that Mr. Pillard was not "available" for work during the apprenticeship training because Mr. Pillard had chosen to attend the training instead of going to work. The employer asserts that Mr. Pillard was unemployed because he had elected to attend training and claim unemployment insurance benefits and that Mr. Pillard was not "available" for work during the week.

The company did not previously object to the claimant or similarly situated employees claiming benefits during the apprenticeship training weeks until a change took place in January, 2019 which changed the way the company was charged for benefits paid to the individuals who were away from work to attend the apprenticeship training programs.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.22(2)(1), (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Iowa Admin. Code r. 871-24.23(41) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the

individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

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.

In the case at hand, Mr. Pillard was an employed as an apprentice working for the captioned heating and air-conditioning contractor and enrolled in a mandatory apprenticeship training program by a specific agreement between the company and the union. The employer agreed that Mr. Pillard (and similarly situated workers in the apprenticeship training program) would not be scheduled for work by the employer for one week period between March 4, 2019 and March 10, 2019. Although the claimant was not scheduled to work by the company and was not paid, his attendance and participation in the apprentice training program to obtain a journeyman's license in the plumbing and steam fitter's field was mandatory and part of the bargaining agreement between the employer and the union. Because the length of time that the claimant was not scheduled for work and not paid was four weeks or less in duration, Mr. Pillard was considered to be temporarily unemployed and still attached to the B G Brecke, Inc. Company because he would be returning to work the next week and the claimant was not required to seek employment with other companies.

The evidence establishes that the employer did not make his attendance at the apprenticeship training optional or that the employer had working hours available to Mr. Pillard, or that they had attempted to recall him to available work. The evidence does not show that the parties contemplated or entered into a leave of absence agreement.

Work was not scheduled for Mr. Pillard for the one week period because the company required him to either possess a journeyman's license or be engaged in apprenticeship training with the union.

Based upon the evidence in the record, the administrative law judge concludes that Mr. Pillard has satisfied the able and available requirements of the law and is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

Although the employer followed this procedure in the past and did not object to the payment of unemployment insurance benefits to individuals attending required apprenticeship training, the employer now objects because of a change in the law that became effective in January, 2019 because the employer does not agree with the legislative change that became in effective in January 2019, raising the employer's contribution rate. The administrative law judge does not have the authority to overrule, modify, or change laws or regulations of the State of Iowa is within the province and authority of the state legislature as to authorize representatives.

DECISION:

The representative's unemployment insurance decision dated March 20, 2019, reference 02 is affirmed. Claimant is still employed by this employer. Claimant's unemployment was caused by a short-term layoff beginning March 3, 2019. Claimant meets the able and available requirements of the law and is eligible to receive unemployment insurance benefits effective March 3, 2019, provided he is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn