

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM S GERST
Claimant

APPEAL NO. 15A-UI-11482-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROCKWAY MECHANICAL & ROOFING
Employer

OC: 09/27/15
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.4(3) – Same Hours & Wages

STATEMENT OF THE CASE:

Adam Gerst filed a timely appeal from the October 14, 2015, reference 02, decision that denied benefits effective October 11, 2015, based on an Agency conclusion that Mr. Gerst was not partially unemployed from Brockway Mechanical & Roofing. After due notice was issued, a hearing was held on October 29, 2015. Mr. Gerst did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Shannon McKenzie represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-11481-JTT. The administrative law judge took official notice of the following Agency administrative records: DBRO and KCCO.

ISSUE:

Whether the claimant was able and available for work within the meaning of the law effective October 11, 2015.

Whether the claimant was partially unemployed effective October 11, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adam Gerst began his employment with Brockway Mechanical & Roofing in October 2014 and continues in that employment at this time as a full-time roofing laborer. Mr. Gerst is assigned to work at various job sites. Matt Shriver, Superintendent, is Mr. Gerst's supervisor. Mr. Gerst also answers to the job site foreman. On September 24, 2015, Mr. Shriver notified Mr. Gerst that he was discharged from the employment for attendance. On that day, Mr. Gerst had been absent for personal reasons and had failed to notify the employer of his need to be absent. Mr. Gerst asserted the absence had been based on a flat tire, but did not explain why he had not notified the employer. Mr. Gerst asked for another chance in the employment. After discussion, Mr. Shriver notified Mr. Gerst on October 7, 2015 that the employer was rescinding the discharge and that the employer would provide Mr. Gerst one more chance. Mr. Gerst returned to the full-time employment on Monday, October 12, 2015. The employer treated the return as a continuation of the prior employment, rather than as a new hire.

Mr. Gerst established a claim for benefits that was effective September 27, 2015. Mr. Gerst made weekly claims for the weeks ending October 3 and 10, 2015. Mr. Gerst then discontinued his claim for benefits. Brockway Mechanical & Roofing is Mr. Gerst's sole base period employer for purposes of the claim that was effective September 27, 2015.

REASONING AND CONCLUSIONS OF LAW:

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 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. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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).

The decision that Mr. Gerst appealed in this appeal number concerned his eligibility for benefits effective October 11, 2015. The evidence in the record establishes that effective Monday, October 12, 2015, Mr. Gerst returned to his full-time employment with Brockway Mechanical & Roofing. Because Mr. Gerst was back at his full-time employment, he would not meet the "available" for work requirement to be eligible for unemployment insurance benefits effective October 11, 2015. Because Mr. Gerst was back at this full-time employment, he would not meet the definition of being partially or temporarily unemployed effective October 11, 2015. Benefits are denied effective October 11, 2015.

DECISION:

The October 14, 2015, reference 02, decision is affirmed. Effective October 12, 2015, the claimant was employed full-time and did not meet the availability requirement to be eligible for benefits. Effective October 12, 2015, the claimant was neither partially unemployed nor temporarily unemployed. Benefits are denied effective the week that started October 11, 2015.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs