

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ERIC J DORGE

Claimant

APPEAL NO. 19A-UI-01347-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINGER CONTRACTING CO

Employer

OC: 11/25/18

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 13, 2019, reference 01, decision that allowed benefits to the claimant beginning February 3, 2019, provided he was otherwise eligible based on the deputy's conclusion that the claimant able to work and available for work on a short-term layoff. After due notice was issued, a hearing was held on March 1, 2019. Claimant Eric Dorge 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 has been able to work and available for work since February 3, 2019.

Whether the claimant has been partially unemployed and/or temporarily unemployed since February 3, 2019.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning February 3, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Eric Dorge is employed by Winger Contracting Company as a full-time HVAC Service Technician Apprentice. The workplace is located in Ottumwa. Mr. Dorge's regular work hours are 8:00 a.m. to 4:30 p.m. Monday through Friday. Mr. Dorge's hourly wage is \$29.28. Mr. Dorge began the employment in 2016. On the first day of the employment, Mr. Dorge's supervisor, Service Manager Chris Johnson, told Mr. Dorge that he would get Mr. Dorge into the five-year apprentice program through the local trade union. Mr. Dorge subsequently applied for and was accepted into the five-year apprenticeship program. Mr. Dorge's participation in the apprenticeship training includes periodic week-long classroom training sessions at the union

local training center located in Rock Island, Illinois. The employer contributes to the cost of the training pursuant to a collective bargaining agreement with the union local. Mr. Dorge's hourly wage and employer-sponsored benefits are tied to Mr. Dorge's progress in the apprenticeship program. The employer directly benefits from the training Mr. Dorge receives through the apprenticeship program.

During the week of February 3-9, 2019, Mr. Dorge participated in apprentice classroom training on a full-time basis. The training hours were 7:30 a.m. to 4:30 p.m. Monday through Friday. Mr. Dorge did not request a leave of absence and the employer did not approve a leave of absence. The employer did not assign any work to Mr. Dorge during that week and Mr. Dorge did not refuse any work that week. The employer did not pay any wages to Mr. Dorge for that week. During the week before and the week after the week-long training, Mr. Dorge performed work for the employer on a full-time basis.

Mr. Dorge established an additional claim for benefits that was effective February 3, 2019. Winger Contracting Company is the sole base period employer in connection with the claim. Mr. Dorge received \$485.00 in unemployment insurance benefits for the benefit week that ended February 9, 2019. Mr. Dorge 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.

Whether one relies upon a theory of partial unemployment or temporary unemployment, Mr. Dorge is eligible for benefits for the benefit week that ended February 9, 2019, provided he meets all other eligibility requirements. Under the partial unemployment analysis, Mr. Dorge worked fewer (zero) wage-generating hours during the week of training and thereby earned less than his weekly benefit amount plus \$15.00. Under the temporary unemployment analysis, the employer elected not to assign work to Mr. Dorge or pay him wages during the week of the training, which left Mr. Dorge 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 9, 2019.

DECISION:

The February 13, 2019, reference 01, decision is modified as follows. The claimant was able to work and available for work within the meaning of the law, but partially and temporarily unemployed during the week that ended February 9, 2019. The claimant is eligible for benefits for the week that ended February 9, 2019, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs