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In the Supreme Court of Iowa
No. 21-1948

KYLE DORNATH,
Appellant,

vs.

EMPLOYMENT APPEAL BOARD
and WINGER CONTRACTING, CO.,
Appellees.

On Appeal from the Iowa District Court for Polk County,
Fifth Judicial District of Iowa, The Honorable Jeanie Vaudt
Polk County Case No. CVCV061369

FINAL BRIEF FOR APPELLANT AND REQUEST FOR ORAL ARGUMENTS

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1. Did the EAB abuse its discretion and consequently prejudice Mr. Dornath's substantial rights by ignoring prior precedent regarding mandatory training?

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ii. *Berry v. Cmty. Elec. Inc.*, 18A-UI-02905-DL-T (Unemp. Ins. Apps. 2018

iii. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980

iv. *Cottrell v. Eckelberg Floorcovering, LLC*, 15A-UI-00358-S2T (Unemp. Ins. Apps. 2015

v. *Kokemuller v. The Schebler Co.*, 17-A-UI-08591-JE-T (Unemp. Ins. Apps. 2016)

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xii. *Sciacca v. Iowa Dep't of Human Servs.*, 737 N.W.2d 326, 2007 WL 2004531 (Table) (Iowa Ct. App. 2007)

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i. IOWA CODE § 17A.19
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iii. IOWA CODE § 96.4(3)

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i. Iowa Admin. Code r. 871-24.39(2)

2. Did the EAB prejudice Mr. Dornath's substantial rights by applying an erroneous interpretation of law when it construed the word "works"?

Cases

i. *Baker v. Kleiman Constr., Inc.*, 13A-UI-02339-HT (Unemp. Ins. App. 2013)
ii. *Bridgestone/Firestone, Inc. v. Emp't App. Bd.*, 570 N.W.2d 85 (Iowa 1997)
iii. *Doe v. Iowa Dep't of Human Services*, 786 N.W.2d 853 (Iowa 2010)
iv. *Hart v. Iowa Dep't of Job. Servs.*, 394 N.W.2d 385 (Iowa 1986)
v. *Hradsky*, No. 1827-BR-95 (Md. Dep't of Econ. & Emp. Dev. App. Bd. 1995)
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vii. *Kennedy v. Fla. Unemp. App. Comm'n*, 46 So. 3d 1192 (Fla. Dist. Ct. App. 2010)
viii. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8 (Iowa 2010)
ix. *Sladek v. Emp't App. Bd.*, 939 N.W.2d 632 (Iowa 2020)

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vi. N.Y. LAB LAW § 599.1
vii. OR. REV. STAT. § 657.357
viii. WYO. STAT. § 27-3-307

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i. Cal. Code Regs. tit. 22, § 1267-2
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i. Black's Law Dictionary (11th ed. 2019)

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Cases

i. *Baker v. Kleiman Constr., Inc.,* 13A-UI-02339-HT (Unemp. Ins. App. 2013).
ii. *Berry v. Cmty. Elec. Inc*., 18A-UI-02905-DL-T (Unemp. Ins. Apps. 2018)
iii. *Kay Mitchell v. Clay County Lodging LLC*, 21A-UI-05161-LJ-T (Unemp. Ins. Apps. 2020)
iv. *Meyer v. IBP, Inc.,* 710 N.W.2d 213 (Iowa 2006)
v. *Purcell v. Frank Millard & Co*., 19BUI-04633 (EAB 2017)
vi. *Sciacca v. Iowa Dep't of Human Servs.,* 737 N.W.2d 326, 2007 WL 2004531 (Table) (Iowa Ct. App. 2007)
vii. *Scott v. Frank Millard & Co*., 19BUI-03654 (EAB 2019)
viii. *Stonger v. Frank Millard & Co.,* 19BUI-05919 (EAB 2019)
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4. Did the EAB prejudice Mr. Dornath's substantial rights by applying an erroneous interpretation of law when it applied the full-time student disqualification to Mr. Dornath?

Cases

i. *Irving v. Emp't App. Bd.,* 883 N.W.2d 179 (Iowa 2016)
ii. *Renda v. Iowa Civil Rights Comm'n,* 784 N.W.2d 8 (Iowa 2010)
iii. *Sladek v. Emp't App. Bd.,* 939 N.W.2d 632 (Iowa 2020)

Statutes

i. IOWA CODE § 17A.19 (10)(c)
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Cases

i. *C.F. Sullivan v. Chicago & Nw. Transp. Co.,* 326 N.W.2d 320 (Iowa 1982)
ii. *Hanna,* 18A-Ul-09974-H2T (Unemp. Ins. App. 2018)
iii. *Hornby v. State,* 559 N.W.2d 23 (Iowa 1997)
iv. *Irving v. Emp't App. Bd.,* 883 N.W.2d 179 (Iowa 2016)
v. *Michelle Goodwin v. Apts Downtown Inc*., 20B-Ul-05103 (EAB 2020)
vi. *Renda v. Iowa Civil Rights Comm'n,* 784 N.W.2d 8 (Iowa 2010)
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viii. *Sweeney v. B G Brecke, Inc*., 19A-UI-03945-JE-T (Unemp. Ins. Apps. 2019)

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i. IOWA CODE § 17A.19 (10)(c)
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viii. IOWA CODE § 96.5 (7)(b)
ix. IOWA CODE § 96.7(2)(a)(2)(e)

Regulations

i. Iowa Admin. Code r. 871-24.39(2)

6. Did the EAB prejudice Mr. Dornath's substantial rights by applying an erroneous interpretation of law, or alternatively abusing its discretion, when it attributed the burden of proof to Mr. Dornath for a disqualification, specifically a voluntary leave of absence?

Cases

i. *Bridgestone/Firestone, Inc. v. Emp't App. Bd.*, 570 N.W.2d 85 (Iowa 1997)
ii. *Irving v. Emp't App. Bd.*, 883 N.W.2d 179 (Iowa 2016)
iii. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8 (Iowa 2010)
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7. Did the EAB prejudice Mr. Dornath's substantial rights by ignoring substantial evidence that the employer failed to meet its burden of proof for a disqualification, namely a voluntary leave of absence?

Cases

i. *Meyer v. IBP, Inc.*, 710 N.W.2d 213 (Iowa 2006)

ii. *Sciacca v. Iowa Dep't of Human Servs.,*737 N.W.2d 326, 2007 WL 2004531 (Table) (Iowa Ct. App. 2007)

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i. IOWA CODE § 17A.19 (11)(c)
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8. Did the EAB prejudice Mr. Dornath's substantial rights by failing to narrowly construe the leave of absence disqualification and by ignoring substantial evidence that Mr. Dornath was not on a voluntary leave of absence?

Cases

i. *Bridgestone/Firestone, Inc. v. Emp't App. Bd.,* 570 N.W.2d 85 (Iowa 1997)
ii. *Doyne v. Union Elec. Co*., 953 F.2d 447 (8th Cir. 1992)
iii. *Efkamp v. Iowa Dep't of Job Servs.,* 383 N.W.2d 566 (Iowa 1986)
iv. *Guerro v. FJC Sec. Servs*., No. 09 Civ. 7216 (SHS)(RLE), 2010 WL 11530627 (S.D.N.Y. 2008)
v. *Iowa Malleable Iron Co. v. Iowa Emp't Sec. Comm'n,* 195 N.W.2d 714 (Iowa 1972)
vi. *Irving v. Emp't App. Bd.,* 883 N.W.2d 179 (Iowa 2016)
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viii. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8 (Iowa 2010)
ix. *Sladek v. Emp't App. Bd.,* 939 N.W.2d 632 (Iowa 2020)
x. *NLRB v. Amax Coal Co*., 453 U.S. 322 (1981)
xi. *Noble v. Sombrotto*, 84 F.Supp.3d 11 (D.D.C. 2015)
xii. *Ortiz v. Local 32BJ*, No. 07 Civ. 8030 (LTS) (KNF), 2008 WL 2064810 (S.D.N.Y. 2008).

Statutes

i. 29 U.S.C. § 186(c)(5)
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i. 29 C.F.R. § 29.2
ii. 29 C.F.R. § 29.8(b)(1)(i)

ROUTING STATEMENT

This case presents multiple questions of first impression and should be retained by the Supreme Court of Iowa pursuant to Iowa R. App. P. 6.1101(2)(c). The appellant, Kyle Dornath, is an apprentice with the Fort Dodge Joint Apprenticeship & Training Committee (the "JATC"). Through the JATC, Mr. Dornath was assigned to and began working for the intervenor-appellee, Winger Contracting Co. ("Employer"), around October 19, 2019.

To satisfy the requirements of the apprenticeship, which are regulated by the United States Department of Labor ("USDOL"), Mr. Dornath is required to participate in both classroom training and on-site work for Employer. Mr. Dornath applied for unemployment benefits for the days that he was attending the mandatory classroom training that occurred from May 11, 2020 through May 15, 2020. This application for benefits was denied by the Employment Appeal Board ("EAB" or "Board"). This denial marked a sudden and unjustified departure from the EAB's legally sound past practices by erroneously interpreting new meaning into unchanged statutes that had routinely permitted apprentices attending mandatory training to qualify for unemployment benefits while attending mandatory training.

The Iowa Court of Appeals has never addressed the issue of an apprentice qualifying for unemployment benefits through partial and/or

temporary unemployment under IOWA CODE § 96.4(3)(a), § 96.1A(37)(c), and § 96.1A(37)(b). Nor has the Iowa Court of Appeals determined whether an apprentice is on an involuntary leave of absence while attending mandatory training. Significantly, the interpretation of these provisions will impact thousands of individuals within the State of Iowa. The USDOL's most recent tracking of registered apprenticeship programs revealed that nearly eight-thousand (8,000) apprentices train in Iowa. *See Registered Apprenticeship National Results Fiscal Year 2020*, U.S. DEPARTMENT OF LABOR https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020 (last accessed Jan. 31, 2022). Many of these apprentices apply for unemployment benefits during mandatory training days, and because these apprentices were properly awarded such benefits for decades prior to the EAB's sudden and unjustified departure from well-established precedent, many of these apprentices will likely continue to apply for benefits. If the EAB remains unchecked in its erroneous actions, then thousands of families are at risk of losing income, and in turn, financial stability. The EAB's unjustified actions will also threaten to deter entry into apprenticeship programs, which provide valuable education and training in high-demand industries. The Supreme Court should clarify the rights of Iowa apprentices to be awarded

unemployment benefits during periods of mandatory training by retaining these issues of first impression.

STATEMENT OF THE CASE

This is an appeal of the Iowa District Court for Polk County's ruling on Mr. Dornath's Petition for Judicial Review, which challenged the EAB's decision to deny Mr. Dornath unemployment benefits. The District Court affirmed the denial of unemployment benefits issued by the EAB.

Because it was mandatory for Mr. Dornath to attend training instead of reporting to his normal job, he filed for unemployment benefits for the week of May 10, 2020 through May 16, 2020. Employer challenged his application for benefits, and on or about July 27, 2020, Iowa Workforce Development issued an initial decision, denying Mr. Dornath benefits. (App. p. 21, Lines 5-9).[1]

Shortly thereafter, Mr. Dornath appealed the initial decision to an Administrative Law Judge, who conducted a hearing on September 24, 2020. (App. p. 18). The Administrative Law Judge purportedly issued a decision on or about September 28, 2020, which erroneously held that Mr. Dornath was not able and available to work. (App. pp. 168-72).

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[1] Any and all references styled in this manner refer to the Appendix.

On January 19, 2021, the EAB subsequently issued its decision, denying unemployment benefits. (App. pp. 367-78). In its decision, the EAB erroneously determined that the absence in question was voluntary because the JATC derived its authority from the collective bargaining agreement negotiated by Mr. Dornath's union—the International Brotherhood of Electrical Workers Local No. 347 (the "Union")—and Employer. (App. p. 368). It also stated that the issue of whether the voluntary leave was to be paid or unpaid was unresolved, yet refused to remand the matter. (App. p. 369). Furthermore, the EAB erroneously held that Mr. Dornath was not able and available to work and that he did not qualify for an exception to the availability requirement. (App. pp. 375-77). Specifically, the EAB stated that Mr. Dornath was not partially unemployed because he performed no services and earned no wages. (App. p. 375). The EAB further stated he was not temporarily unemployed because his situation did not identically match one of the enumerated circumstances in the statute. (App. p. 377).

On February 17, 2021, Mr. Dornath filed a Petition for Review in the Iowa District Court for Polk County in order to reverse the numerous errors contained in the EAB's decision. (App. pp. 382-86). The District Court issued an Order on Judicial Review on November 18, 2021, affirming the

denial of unemployment benefits. (App. p. 464). Mr. Dornath filed a timely appeal of that decision. (App. p. 467).

STATEMENT OF THE FACTS

Mr. Dornath has worked for Winger Contracting Co. ("Employer") since approximately October 19, 2019 as an electrical apprentice. (*See* App. p. 142). As an electrical apprentice, Mr. Dornath is responsible for running conduit, pulling wire, and balancing lights, along with various other tasks. He works for Employer in a full-time capacity. (App. p. 23, Lines 8-19).

Mr. Dornath is enrolled in an apprenticeship program administered by the Fort Dodge Joint Apprenticeship & Training Committee (the "JATC"). (*See* App. p. 205). The JATC is responsible for assigning all apprentices to job training opportunities with signatory employers. (App. pp. 152, 268). Here, Employer is a part of the National Electrical Contractors Association ("NECA"), which has an active collective bargaining agreement with the International Brotherhood of Electrical Workers Local No. 347 (the "Union"). Notably, the apprenticeship's day-to-day administration lies *not* with the Union or NECA, but with the JATC, a complete and separate entity. It was through the JATC that Mr. Dornath was assigned to—and began working for—Employer. (*See* App. p. 142) ("Apprentice On-The-Job Training Assignment")). The JATC has stringent attendance requirements for its

training sessions, and if Mr. Dornath did not attend such sessions, then he would be subject to losing the ability to work in his desired profession for at least two (2) years, as discussed more fully below.

The JATC, pursuant to applicable regulations of the USDOL, is responsible for providing apprentices with not only on-the-job-training, but also related classroom instruction; indeed, the JATC provides—and Mr. Dornath must complete during his apprenticeship—eight hundred (800) hours of such training. (App. p. 145). The JATC does this by indenturing its apprentices to the Des Moines Electrical Apprenticeship. (App. p. 144). The Des Moines Electrical Apprenticeship requires each apprentice to "participate in a minimum of 180 hours of related classroom training per year . . . ." (App. p. 93). Thus, the JATC—via the Des Moines Electrical Apprenticeship[2]—schedules various classroom trainings throughout the year for its apprentices, including the training Mr. Dornath attended from May 11, 2020 to May 15, 2020. (App. p. 29, Lines 31-33).

In order to ensure that apprentices participate in the required amount of classroom training, the JATC implemented stringent attendance requirements

[2] The JATC, from Fort Dodge, is a regional JATC, which indentures apprentices to the Des Moines Electrical Apprenticeship Training Trust. (App. p. 344). In effect, the JATC specifically addresses training and education in its region, while the Trustees manage and administer the Trust.

for its trainings, including the May 11, 2020 through May 15, 2020 mandatory training. (App. p. 30, Line 27; App. p. 34, Lines 3-4). Notably, the JATC expressly prohibits work from interfering with classroom training. (App. p. 148) ("Work will not be an excuse for missing class.")).

As Mr. Dornath testified, had he missed the May 11, 2020 through May 15, 2020 training, he would have been subject to severe discipline, which could have resulted in his termination from the Apprenticeship. (*Id.*). Because of the USDOL regulatory structure and because Employer requires electrical apprentices to be a part of the JATC, Mr. Dornath's termination from the JATC would result in termination from Employer. (App. p. 25, Lines 5-7; App. p. 31, Lines 4-7; App. p. 32, Lines 2-7). Even more severe, an apprentice terminated from the JATC cannot work for any employer under the JATC for a minimum of two (2) years. (App. p. 68). Indeed, Mr. Dornath testified that if he skipped mandatory training, then he could be terminated and prohibited from working for Employer, or work any job under the JATC's purview, in any capacity, for at least two (2) years. (App. p. 25, Lines 5-7; App. p. 31, Lines 4-7; App. p. 32, Lines 2-7).

Thus, when the JATC scheduled Mr. Dornath to attend a training from May 11, 2020 through May 15, 2020, along with approximately fifty (50) other apprentices from around the area, he obliged. (*See* App. p. 166). This

training was directly related to his duties at Employer, as it covered code calculations. (*Id.*). Moreover, this training, like all other JATC classroom trainings, was mandatory, and Mr. Dornath was not permitted to miss the training in order to work. (App. p. 26, Line 6).

During the mandatory training, Mr. Dornath received no wages from Employer. While Mr. Dornath's typical schedule spans Monday through Thursday, from 6:00 AM to 4:30 PM, the training spanned Monday through Friday, from 8:00 AM to 3:30 PM. (App. p. 23, Lines 22-23; App. p. 25, Lines 28-30). Even though the classroom training did not completely overlap Mr. Dornath's work schedule, Employer chose not to schedule him for any work during the week in question. (App. p. 25, Lines 11-15). Upon completion of his classroom training, Mr. Dornath returned to his normal work schedule for Employer.

ARGUMENT

As discussed below, the EAB's decision is wholly erroneous and must be reversed, or alternatively remanded, with instructions to award Mr. Dornath unemployment benefits for the week in question.

Actions contesting an administrative agency decision are governed by the Iowa Administrative Procedures Act. *See* IOWA CODE § 17A.19. This Court reviews the district court's ruling and determines whether it would have

reached the same result. *See Auen v. Alcoholic Beverages Div., Iowa Dep't of Commerce*, 679 N.W.2d 586, 589 (Iowa 2004). Such an evaluation grants this Court the broad discretionary power to review the administrative agency's decision and determine whether the agency's procedural and substantive errors caused the "substantial rights of the person seeking judicial relief [to] have been prejudiced," warranting a reversal. IOWA CODE §17A.19(10)(a)-(n).

Here, the EAB's conclusions are riddled with errors, warranting reversal. The EAB recently, suddenly, and unjustifiably departed from well-established precedent. By doing so, the EAB chose to read in new meaning to unchanged statutes–which were previously used to grant apprentices in mandatory training unemployment benefits–in order to arbitrarily and capriciously deny Mr. Dornath benefits. As seen here and in other recent EAB decisions, the Board's new and seemingly anti-apprentice approach has led to a range of erroneous interpretations of law and numerous failures to make findings of fact based on substantial evidence.

Furthermore, in Mr. Dornath's case, the EAB applied a new interpretation of the partial unemployment exemption, which applied an improperly narrow construction to the word "works," while also ignoring substantial evidence that Mr. Dornath did not work full time during the week

in question. The EAB further interpreted the full-time student disqualification so as to improperly expand its reach to apprentices. Alternatively, the EAB erroneously interpreted "lack of work" to find Mr. Dornath was not temporarily unemployed. Finally, while not expressly ruling on the issue, the EAB erroneously imputed the burden of proof for an involuntary leave of absence upon Mr. Dornath, while simultaneously applying a broad interpretation of the disqualification and ignoring substantial evidence demonstrating that Mr. Dornath had no choice but to attend the mandatory training.

All of these actions, individually and in the aggregate, demonstrate that the Court should reverse the EAB's decision to deny benefits.

I. Standard of Review for All Issues Raised on This Appeal

Actions contesting an administrative agency decision are governed by the Iowa Administrative Procedures Act. *See* IOWA CODE § 17A.19. This Court reviews the district court's ruling and determines whether it would have reached the same result. *See Auen v. Alcoholic Beverages Div., Iowa Dep't of Commerce*, 679 N.W.2d 586, 589 (Iowa 2004). Such an evaluation grants this Court the broad discretionary power to review the administrative agency's decision and determine whether the agency's procedural and substantive errors caused the "substantial rights of the person seeking judicial relief [to]

have been prejudiced," warranting a reversal. IOWA CODE § 17A.19(10)(a)-(n).

Specifically, the Court may reverse—or alternatively remand—an action where the claimant's substantial rights were prejudiced because the agency action is, in relevant part:

> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
>
> […]
>
> f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when the record is viewed as a whole.
>
> […]
>
> n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.
>
> IOWA CODE §§ 17A.19(10)(c), (f), (n).

The Iowa Administrative Procedure Act states that agencies are not entitled to deference in areas of the law in which they have not been granted deference. IOWA CODE § 17A.19(11). "Where there is no express grant of interpretive authority, [the Court] . . . [will] not grant deference to an agency when the terms being construed have independent meaning not within its expertise." *Irving v. Emp't App. Bd.*, 883 N.W.2d 179, 185 (Iowa 2016).

Stated differently, where no interpretive authority has been expressly granted to an agency, its legal interpretations are afforded no deference. *Id.* Even more important, a mere grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language." *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 13 (Iowa 2010). Indeed, the Iowa Supreme Court recently held that it "would not defer to the EAB's interpretation of various legal terms used in [Chapter 96]." *Sladek v. Emp't App. Bd.*, 939 N.W.2d 632, 637 (Iowa 2020). Thus, this Court should not defer to the EAB's legal interpretations. Moreover, and perhaps most importantly, Iowa law requires construing the unemployment statute broadly in favor of the claimant so as to effectuate its humane and beneficial purposes. *Irving,* 883 N.W.2d at 192; *Bridgestone/Firestone, Inc. v. Emp't App. Bd.*, 570 N.W.2d 85, 96 (Iowa 1997).

While an agency's findings of fact are given deference, where substantial evidence does *not* support those findings, the Court should reverse the decision. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Iowa Administrative Procedure Act defines substantial evidence as "the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to

be serious and of great importance." IOWA CODE § 17A.19(10)(f)(1). Stated differently, "[e]vidence is substantial when a reasonable mind could accept it as adequate to reach the same findings." *Bridgestone/Firestone, Inc.*, 570 N.W.2d at 90. A review for substantial evidence is done by viewing the record as a whole. *Sciacca v. Iowa Dep't of Human Servs.*, 737 N.W.2d 326, 2007 WL 2004531, at *2 (Table) (Iowa Ct. App. 2007).

Similarly, in such situations where an agency's action was "unreasonable, arbitrary, capricious, or an abuse of discretion," the error lies with the agency's "application of the law to the facts." IOWA CODE § 17A.19(10)(n); *Meyer*, 710 N.W.2d at 218. In these instance, the Court should apply even less deference than the deference afforded to findings of fact. *Meyer*, 710 N.W.2d at 219.

II. Precedent Demonstrates the EAB's Decision is Contrary to Past Practice.

The EAB recently adopted a seemingly anti-apprentice approach to awarding benefits, constituting an abuse of discretion. This animus caused the EAB to make a recent, sudden, and unjustified departure from well-established precedent. While the EAB has repeatedly attempted to make it appear as though the Iowa law remarkably shifted such that it now inhibits apprentices from being awarded benefits, *none* of the statutory language Mr. Dornath relies upon has changed. As such, Mr. Dornath respectfully requests

that this Court acknowledge the weight of prior precedent interpreting the statutory requirements for unemployment, which demonstrates Mr. Dornath is eligible for benefits, and reverse the EAB's decision.

A. Preservation of Error

On December 17, 2021, Mr. Dornath filed a timely Notice of Appeal from the District Court's Order on Judicial Review on November 18, 2021, affirming the EAB's decision to deny unemployment benefits. (App. p. 467). Mr. Dornath raises the same issue, regarding the EAB's decision being contrary to legally sound past practices, on this Appeal as was presented to and decided by the EAB (App. p. 377), and subsequently raised for the District Court's review (*See* App. pp. 411, 445-49).

B. Standard of Review

The standard of review is for correction of the agency's unreasonable, arbitrary, capricious action, or abuse of discretion, prejudicing the claimant's substantial rights and warranting a reversal. IOWA CODE § 17A.19(10)(n); (*See* Part I, "Standard of Review for All Issues on This Appeal").

C. Argument

The EAB recently adopted a seemingly anti-apprentice approach to awarding benefits, constituting an abuse of discretion. Up until late 2019, Iowa Workforce Development tribunals *routinely awarded benefits* for training that constituted a mandatory condition of employment. *See Miller v.*

Modern Piping, Inc., 19A-UI-02968-NM-T, p. 4 (Unemp. Ins. Apps. 2019); *Sweeney v. B G Brecke, Inc.*, 19A-UI-03945-JE-T, pp. 3-4 (Unemp. Ins. Apps. 2019); *Cottrell v. Eckelberg Floorcovering, LLC*, 15A-UI-00358-S2T, p. 2 (Unemp. Ins. Apps. 2015); *Baker v. Kleiman Constr. Inc.*, 13A-UI-02339-HT, pp. 1-2 (Unemp. Ins. Apps. 2013); *Micek v. E&K of Omaha Inc.*, 15R-UI-04505-GT, pp. 1-2 (Unemp. Ins. Apps. 2015); *Pratt v. Neumann Bros. Inc.*, 14A-UI-12927-JCT, p. 2 (Unemp. Ins. Apps. 2014); *Berry v. Cmty. Elec. Inc.*, 18A-UI-02905-DL-T, p. 2 (Unemp. Ins. Apps. 2018); *Parker v. Hussman Corp.*, 18A-UI-08399-NM-T, p. 3 (Unemp. Ins. Apps. 2018). All of these decisions granted benefits under the same circumstances presented here.

When presented with this overwhelming precedent, the EAB erroneously and arbitrarily concluded that these cases are "inapposite" because they were decided "before the change in the approved training regulation." (App. p. 377). The "change" that the EAB was referencing is the Iowa Workforce's modification to Iowa Administrative Code Rule 871-24.39(2) in 2018, which removed apprentice training from the list of Department Approved Training ("DAT"). (App. p. 377). However, a basic inspection of the above cited cases, reveals *not a single case* turned on an apprentice-claimant claiming that he or she engaged in DAT under Iowa Administrative Code Rule 871-24.39(2). Instead, these cases turned on IOWA

CODE § 96.4(3) for qualifications under partial unemployment or temporary unemployment, as Mr. Dornath has repeatedly argued as his grounds for benefits. (App. pp. 235-39). Notably, this argument raised by the EAB that the *regulatory* change under Iowa Administrative Code Rule 871-24.39(2) somehow affects the *statutory* interpretations permitting unemployment benefits to be awarded to apprentices, is the legally erroneous foundation that the EAB built its arguments on to improperly deny Mr. Dornath unemployment benefits.[3]

Moreover, numerous cases cited above were decided *after* the regulation change occurred. *See e.g., Miller*, 19A-UI-02968-NM-T; *Sweeney*, 19A-UI-03945-JE-T; *Berry*, 18A-UI-02905-DL-T; *Parker*, 18A-UI-08399-NM-T. Therefore, even if the EAB's arbitrary request to disregard all precedent "decided before the change to the approved regulatory training regulation" was applied here, several cited cases demonstrate an apprentice undergoing mandatory training qualifies for unemployment benefits because

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[3] Relatedly, the District Court and EAB erroneously applied *Locate.Plus.Com v. Iowa Dep't of Transp.,*650 N.W.2d 609, 618 (Iowa 2002), to argue that the Iowa legislature's failure to specifically authorize unemployment benefits for apprentices during training meant apprentices are somehow barred from benefits. While the regulatory change excluded apprentices from unemployment benefits under DAT, there is nothing to support the contention that the legislature intended apprentices to be completely prohibited from regular unemployment benefits on other statutory grounds.

he or she is temporarily or partially unemployed would still apply. (App. p. 377). Nothing in the change to the DAT regulation changes—let alone mentions—these provisions.

Further, for the EAB to argue that this departure from past precedent is legitimately based, in part, on the USDOL's "Training and Employment Guidance Letter 12-09" suddenly persuading the State to not permit unemployment benefit for apprentices in training, is, we submit, unreasonable considering the Guidance Letter's publication date. (App. pp. 371-73). Not only is the Guidance Letter non-binding, but specifically, this Guidance Letter was issued in 2010, which means for nearly a decade, Iowa awarded unemployment benefits to apprentices in identical situations to that of Mr. Dornath, while this letter was in existence. (*Id*.). Moreover, the Guidance Letter does not provide any legal limitations to apprentices receiving benefits that are already contemplated under Iowa law (i.e., requiring proof of "able and available," partial unemployment, temporary unemployment, involuntary absence). Again, the EAB is improperly reading new meaning into long existing text to disqualify Mr. Dornath from benefits.

Unemployment precedent similarly highlights situations nearly identical to Mr. Dornath's do not constitute a leave of absence. *See Miller*, 19A-UI-02968-NM-T, p. 3 (finding claimant's absence involuntary because

"claimant would be separated from employment if he did not attend the union training"); *Kokemuller,* 17-A-UI-08591-JE-T, p. 2 ("The claimant was required to take an apprenticeship training class in order to maintain his employment . . . . He was not on a leave of absence."); *Sweeney*, 19A-UI-03945, pp. 3-4 (because claimant was away from work at training, which was a mandatory condition of employment, he was temporarily laid off, rather than on a voluntary leave of absence); *see also Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698, 702 (Iowa 1980) (separation after employer's insurer refused to insurer claimant due to driving record; found to not to be a "voluntary" act by claimant; benefits paid). However, this precedent was again ignored by the EAB to arbitrarily deny Mr. Dornath benefits.

In sum, while the EAB has repeatedly attempted to make it appear as though the Iowa law remarkably shifted such that it now inhibits apprentices from being awarded benefits, this does not comport with reality. Indeed, the statutes that Mr. Dornath relies upon to claim eligibility for benefits have all long-existed and been repeatedly used as grounds for apprentices being awarded benefits while in mandatory training. Now, by suddenly adopting this new approach, the EAB has demonstrated that its decisions are not soundly based in law, and are otherwise arbitrary and capricious. Further, the District Court's reliance on the EAB's sudden and unjustified departure from

previous statutory interpretations of availability, partial unemployment, temporary unemployment, demonstrates a continued violation of Mr. Dornath's substantial rights to unemployment benefits.

This Court should therefore acknowledge the weight of prior precedent interpreting the statutory requirements for unemployment presented within this Brief, which demonstrates Mr. Dornath is eligible for benefits, and reverse the EAB's decision.

III. Mr. Dornath was not Required to Demonstrate he was Able and Available to Work.

With this background demonstrating a sudden departure of past precedent, we now turn to the ultimate error by the EAB in refusing Mr. Dornath benefits. Most important to such eligibility for benefits is that Mr. Dornath was *not* required to demonstrate that he was able and available to work in order to qualify for unemployment benefits. Instead, Mr. Dornath qualifies for benefits under either the partial unemployment or temporary unemployment exemption.

The EAB erred in numerous respects to its analysis of these exemptions. Specifically, the EAB failed to apply the plain meaning of the statutory requirements for partial unemployment, and instead erroneously construed an improperly narrow construction of the word "works," while also ignoring substantial evidence that Mr. Dornath did not work full time during

the week in question. Further, the EAB interpreted the full-time student disqualification so as to improperly expand its reach to apprentices. Alternatively, the EAB erroneously interpreted "lack of work" to find Mr. Dornath was not temporarily unemployed.

These erroneous interpretations of law, failures to make findings of fact based on substantial evidence, and otherwise arbitrary and capricious actions, warrant a reversal.

A. Preservation of Error

On December 17, 2021, Mr. Dornath filed a timely Notice of Appeal from the District Court's Order on Judicial Review on November 18, 2021, affirming the EAB's decision to deny unemployment benefits. (App. p. 467). Mr. Dornath raises the same issues regarding not being required to demonstrate he was able and available to work–based on either a showing of partial or temporary unemployment–on this Appeal as were presented to and decided by the EAB and the District Court. (*See* App. pp. 369-77, 409-10, 456-63).

B. Standard of Review

The standard of review is for correction of the agency's erroneous interpretations of law and failures to make findings of fact supported by substantial evidence, prejudicing the claimant's substantial rights and

warranting a reversal. IOWA CODE § 17A.19 (10)(c), (f), (n); (*See* Part I, "Standard of Review for All Issues on This Appeal").

C. Argument

An award of benefits, under Iowa law, requires "the [claimant] is able to work, is available for work, and is earnestly and actively seeking work . . . ." IOWA CODE § 96.4(3). However, a claimant need not demonstrate this requirement if he is deemed partially unemployed, while employed at the claimant's regular job. *Id.* A claimant is considered partially unemployed when "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 § 96.1A(37)(b)(1). In determining whether a claimant is partially unemployed, the Court should construe the statute broadly in favor of the claimant so as to effectuate its humane and beneficial purposes. *Irving*, 883 N.W.2d at 192; *Bridgestone/Firestone, Inc.*, 570 N.W.2d at 96.

In this case, the EAB erred in finding that Mr. Dornath was not partially unemployed. While conceding that Mr. Dornath is still employed by Employer and earned less than his weekly benefit amount plus fifteen dollars (i.e., the EAB found Mr. Dornath met two (2) of the three (3) requirements for demonstrating he was partially unemployed), the EAB oddly held that Mr.

Dornath's training either constituted work for Employer, and thus Mr. Dornath "was performing services for the Employer on a full-time basis during that week," or that the training did not constitute work, such that Mr. Dornath was totally unemployed. (App. p. 374). Both of these conclusions are erroneous.

The EAB's nonsensical "this or that" decision should therefore be reversed with respect to its finding that Mr. Dornath was not partially unemployed because: (1) the EAB applied an impermissibly narrow interpretation of working for an employer for purposes of the partial unemployment statute; and (2) the EAB failed to consider substantial evidence demonstrating that Mr. Dornath worked less that the regular full-time week.

1. The EAB erred in applying a narrow construction of the word "works" when construing the partially unemployed statute.

As noted above, the Iowa Legislature did not clearly vest the EAB with the authority to interpret IOWA CODE § 96.1A(37)(b)(1). *See* IOWA CODE § 17A.19(11); *Renda*, 784 N.W.2d at 13 (finding a grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation of various legal terms used in [Chapter 96]."). Thus, this Court should give no deference to the EAB's erroneous

interpretation of the word "works," relied upon to find Mr. Dornath was not partially unemployed.

Beyond the past history of granting benefits discussed previously, principles of statutory construction demonstrate that a claimant can provide services to an employer and be found to be "partially unemployed." The overarching argument of the EAB appears to be that a claimant, in this training context, can only be "performing services for the Employer on a full-time basis . . . and did not meet the second prong of partial unemployment" or "performing no services . . . [and] 'totally unemployed.'" (App. p. 374). The EAB's position cannot be harmonized with the language of Iowa Code § 96.1A(37). Notably, nothing in the definition of "partially unemployed" speaks to performing "full-time services." Rather, the definition of "partially employed" only speaks to "the individual work[ing] less than the regular full-time week…." As in *Irving*, Mr. Dornath submits the Court should construe the employment security law consistent with the law's legislative purpose – minimizing the burden of involuntary unemployment. 883 N.W.2d at 192; <u>*accord*</u> IOWA CODE § 4.6(3); IOWA CODE § 96.2.

The statutory definition of "totally unemployed" also demonstrates the flaws in the EAB's interpretations. It is well-established that reviewing other provisions may be considered in statutory interpretation. *Irving*, 883 N.W.2d

at 192 ("The concept of considering the entire act and construing its various provisions in that light is well established in our case law involving the Iowa Employment Security Law.") (citations omitted). A claimant is only "totally unemployed" where, for the week in question, "no wages are payable to the individual ***and*** during which the individual performs no services." IOWA CODE § 96.1A(37)(a).[4] Accordingly, a claimant ***who does*** perform services is not totally unemployed. Rather, such claimant fits within the definition of "partially unemployed" – which are the exact circumstances here. The Court "should recognize the difference in adjacent statutory provisions, not ignore it." *Irving*, 883 N.W.2d at 194.

Additional support for Mr. Dornath comes from other jurisdictions. *Irving*, 883 N.W.2d at 195 ("we find the cases in other states of at least some value"). Numerous jurisdictions routinely award benefits for time spent training as a mandatory condition of employment.[5] (App. p. 232). It is readily

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[4] The employment security law definition of "employment" is likewise supportive of the distinction between "wages" and "services" as it contains a provision that, like Section 96.1A(37)(a) separates wages and services, and includes a number of exclusion for "employment" which do not apply here. IOWA CODE § 96.1A(18)(f)(1), (g); accord *Id.* at § 96.1A(40) (definition of "wages").

[5] Numerous jurisdictions routinely award benefits for time spent training as a mandatory condition of employment. In Florida, the District Court of Appeal has held that an employee's "uncompensated training did not constitute employment so as to disqualify him from receiving unemployment benefits." *Kennedy v. Fla. Unemp. Appeals Comm'n*, 46 So. 3d 1192, 1192 (Fla. Dist.

apparent that other states, *and previously Iowa until the EAB's recent actions*, found paying benefits in these circumstances to be consistent with the intent of employment security laws.

The Court could also apply rules of statutory interpretation to determine the Legislature's intent in requiring a claimant for partial unemployment to have worked for the employer during the claimed week. *Doe v. Iowa Dep't of Human Services*, 786 N.W.2d 853, 858 (Iowa 2010). Previously, this Court ruled that statutory interpretation entails giving "words their ordinary and common meaning by considering the context within which they are used, absent a statutory definition or an established meaning in the law." *Id*. While

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Ct. App. 2010). Similarly, Maryland tribunals have determined that denying an employee benefits during a period in which he or she attended mandatory training was contrary to the intent of the unemployment insurance laws. *Hradsky*, No. 1827-BR-95 (Md. Dep't of Econ. & Emp. Dev. App. Bd. 1995). Multiple states additionally have statutes and/or regulations that permit claimants to receive unemployment benefits for the time they spend in mandatory training. *See* Wash. Admin. Code. § 192-150-160 ("[A]pprentices who temporarily stop work for a participating employer to attend related/supplemental instruction that is required . . . are considered to be on a temporary layoff from work."); N.Y. LAB. LAW § 599.1 ("Notwithstanding any other provision of this article, a claimant shall not become ineligible for benefits because of the claimant's regular attendance in a program of training . . . ."); Cal. Code Regs. tit. 22, § 1267-2 ("Any apprentices, otherwise eligible for benefits under the code, who is training is in training is eligible to receive such benefits for any week during which he or she is otherwise unemployed and participates in training, and such benefits shall not be denied to any apprentice for any such week because of the application of any provisions of the code relating to availability for work, active search for work, or refusal to accept work."); OR. REV. STAT. § 657.357; WYO. STAT. § 27-3-307.

Chapter 96 does not provide a definition of "works," Black's Law Dictionary defines "work" as "physical and mental exertion to attain an end, esp. as controlled by and for the benefit of an employer." Work Definition, *Black's Law Dictionary* (11th ed. 2019). The above definition of "works" allows this Court to conclude that Mr. Dornath was working for Employer for purposes of the partial unemployment statute. Specifically, Mr. Dornath physically and mentally exerted himself during the mandatory training from May 11, 2020 to 15, 2020, to attain new skills, required by and a benefit for Employer. He attended classes that trained him to perform skills required for his position as an electrician. (*See* App. pp. 25, Lines 21-27, 166). The record reflects that Mr. Dornath attended training directly related to his job with Employer. Mr. Dornath testified that the training addressed code calculations and motors (App. pp. 25, Lines 21-27, 166); these are skills that are expressly connected to his position as an electrician and allow him to perform certain tasks for Employer. This demonstrates that the training was not for Mr. Dornath's pleasure or self-interest, but rather, the training directly benefitted Employer by expanding the amount of work and tasks that could be assigned to Mr. Dornath. Given that the training at issue unequivocally benefits Employer, Mr. Dornath's mandatory training should be considered "performing

services" for his employer, as he learned new skills to perform his role as an electrical apprentice.[6]

In addition, the EAB's narrow construction of the word "works" should be disregarded because it was based on the EAB's erroneous interpretation of *Hart*, a case that is easily distinguishable from Mr. Dornath's situation here. 394 N.W.2d 385 (Iowa 1986). In *Hart*, the claimant went on maternity leave, and upon her return to employment, she requested to shift to a part-time schedule. *Id*. at 386. Because there was no part-time position available for the claimant, she and the employer agreed to a six-month leave of absence. *Id.* Claimant attempted to collect unemployment benefits for this time, but the Court found that the claimant performed no services during her leave of absence, such that she did not meet the definition of partially unemployed. *Id.*

However—unlike the claimant in *Hart*—Mr. Dornath *did* perform services for the employer during the week in question. As described above, Mr. Dornath attended classes that trained him to perform skills required for

[6] Because a broad and humane construction of "work" demonstrates that mandatory training for the benefit of the employer should constitute work, the EAB further erred in discussing total unemployment. "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." IOWA CODE § 96.1A(37)(a). However, as discussed, a broad interpretation of the word "work" abundantly demonstrates Mr. Dornath—via mandatory training—performed services for Employer during the week in question.

his position as an electrician. (*See* App. pp. 25, Lines 21-27, 166). The record reflects that Mr. Dornath attended training directly related to his job with Employer by acquiring new skills that would allow him to perform more tasks for Employer. (App. pp. 25, Lines 21-27, 166). By contrast, nowhere in *Hart* is there any mention of the claimant participating in any sort of training or other activities for the benefit of the employer. Thus, *Hart* is factually distinguishable from the current matter, and it cannot stand to prevent Mr. Dornath from receiving benefits. Because the EAB improperly interpreted distinguishable precedent to improperly and narrowly determine what constituted "work" for purposes of the partially unemployed definition, reversal is appropriate.[7]

Moreover, unemployment benefits have been awarded in the past where a claimant attended mandatory work training, as the mandatory work training was considered performing services for the employer. *See Baker v. Kleiman Constr., Inc.*, 13A-UI-02339-HT, p. 2 (Unemp. Ins. App. 2013) (finding that the mandatory training in which claimant participated during his period of unemployment constituted performing services for the employer such that he

[7] While the District Court followed the EAB's nonsensical "this or that" analysis for partial unemployment, it is worth noting that the Court seemingly did find contrary to the EAB's interpretation and application of the word "works," and held that "Kyle [Dornath] was working," during his week of mandatory training from May 11, 2020 to May 15, 2020. (App. p. 459).

was entitled to benefits as a partially unemployed employee). Despite this precedent, the EAB opted to narrowly define "work" so as to deny Mr. Dornath benefits during the worst economic crisis since the Great Depression. Nothing about the EAB's decision reflects the humane and beneficial purpose of the unemployment statute. It is evident that the EAB's errors prejudiced Mr. Dornath.

2. <u>The EAB ignored substantial evidence that demonstrated Mr. Dornath worked less than the regular full-time week pursuant to the partial unemployment definition.</u>

As stated above, a reviewing court should reverse an agency's decision where substantial rights of the appellant have been prejudiced because a finding of fact is not supported by substantial evidence. IOWA CODE §§ 17A.19(10)(f), 17A.19(10)(f)(1). While an agency's findings of fact are given deference, where substantial evidence does *not* support those findings, the Court should reverse. *See* IOWA CODE § 17A.19 (11)(c); *Sciacca*, 737 N.W.2d 326, 2007 WL 2004531, at *2 (requiring issues of substantial evidence be resolved by reviewing the record as a whole); *Meyer*, 710 N.W.2d at 218- 19

(providing that a reviewing court is bound by an agency's finding of fact, unless the finding is not supported by substantial evidence).

Here, the EAB held that if training constituted work for Employer, then Mr. Dornath was employed full-time. Specifically, the EAB stated,

> [i]f attending training is working for the Employer then the Claimant was performing services for the Employer on a full-time basis during that week. He thus did not meet the second prong of partial unemployment. He did not work "less that [sic] the regular full-time week." He thus would not be partially unemployed if training falls within the category of performing work for the Employer.

(App. p. 374). Nevertheless, the record demonstrates that Mr. Dornath's training did not equal a regular full-time week of work. (*See* App. p. 23, Lines, 22-23; App. p. 25, Lines 8-30). Despite this evidence, the EAB determined that Mr. Dornath's training was full-time and improperly denied him benefits. (App. pp. 369-70). Such a result cannot stand.

First, Mr. Dornath's work schedule and his mandatory training schedule did not equate to the same amount of time. Mr. Dornath testified that he works for Employer Monday through Thursday, from 6:00 AM to 4:30 PM. (App. p. 23, Lines 22-23). To contrast, Mr. Dornath attended mandatory training during the week in question Monday through Friday, from 8:00 AM to 3:30 PM. (App. p. 25, Lines 28-30). In addition to the fact that Mr. Dornath's training activities must be considered services performed for the

Employer, it is abundantly apparent that Mr. Dornath was not in training for the same number of hours as he would have worked during his regular full-time workweek. Simple arithmetic indicates that Mr. Dornath's regular full-time workweek is 42 hours; however, his training week was only 37.5 hours, meaning he was shorted 4.5 hours of work, in addition to not being paid. Despite this glaringly apparent information, the EAB ignored this fact.

Relatedly, the District Court erroneously interpreted the partial unemployment requirement of IOWA CODE § 96.1A(37)(b)(1) that claimant must "work[] less than the regular full-time week," to mean that Mr. Dornath had to have worked less than full-time hours (i.e., below the 30-40 hours range). (App. p. 459). This is not the requirement. *See e.g., Kay Mitchell v. Clay County Lodging LLC*, 21A-UI-05161-LJ-T, p. 3 (Unemp. Ins. Apps. 2020) ("In order to be partially unemployed, an individual must be . . . working less than *his or her* regular full-time work week.). Instead, Mr. Dornath need only demonstrate the hours spent performing services for Employer during the week in question, were less than the hours he normally provides to Employer during his regular full-time week. Mr. Dornath provided more than substantial evidence demonstrating this point, but the EAB unjustifiably ignored it, warranting reversal.

Further, because Mr. Dornath's work schedule and his training schedule did not identically align, Mr. Dornath was available each day for at least a portion of the time. Despite those open hours, of which Employer was fully aware, Employer failed to provide him with any work, and further failed to provide him with wages. Again, despite this glaringly apparent information, the EAB ignored this fact. Accordingly, the substantial evidence when viewing the record on the whole indicates that the EAB erred.

In addition, rather than considering the evidence on the whole, the EAB abused its discretion and arbitrarily relied solely on "gotcha" testimony from Mr. Dornath where he stated that his training was full-time. (App. p. 370). Indeed, the evidence provided indisputably refutes this statement, and Mr. Dornath's testimony should be considered in the context that Mr. Dornath lacks training, skills, and expertise in the standards governing a full-time schedule; Mr. Dornath's training is in electrical work, not human resources or law. This highlights that the EAB acted in an arbitrary and capricious manner by refusing to consider the entire record on the whole to the detriment of Mr. Dornath. Further, again the EAB–and subsequently, the District Court–chose to ignore years of precedent and to apply a new interpretation of unchanged statutes to find that Mr. Dornath was not partially unemployed. As previously cited, numerous cases have found apprentices, in similar mandatory trainings,

partially unemployed and granted them benefits. *See e.g., Berry v. Cmty. Elec. Inc*., 18A-UI-02905-DL-T (Unemp. Ins. Apps. 2018); *Baker v. Kleiman Constr., Inc*., 13A-UI-02339-HT (Unemp. Ins. App. 2013).

Because the EAB ignored substantial evidence demonstrating that Mr. Dornath worked less than his full-time work week and ignored precedent showing grants of benefits under partial unemployment, it reached an arbitrary and capricious result, and the decision denying Mr. Dornath benefits must be reversed.

3. The EAB erred in likening Mr. Dornath's apprenticeship to a full-time student in order to disqualify him from receiving benefits.

The EAB additionally erred by impermissibly interpreting the full-time student disqualification to apply to Mr. Dornath's situation. The District Court failed to address this raised issue in its entirety.

This Court should reverse—or alternatively remand—the EAB's action because Mr. Dornath's substantial rights were prejudiced based on the erroneous interpretation and application of the full-time student rule to Mr. Dornath's apprenticeship. IOWA CODE § 17A.19 (10)(c). As such, this Court should not defer to the EAB's legal interpretations of the full-time student rule as applied here to disqualify Mr. Dornath from benefits as an apprentice. *See* IOWA CODE § 17A.19(11); *Renda*, 784 N.W.2d at 13 (finding a grant of

rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation").

Specifically, the EAB held that because unemployment benefits are determined on a weekly basis, Mr. Dornath's week-long training could be likened to that of a full-time student such that he was disqualified from receiving benefits. (App. pp. 369-70). But this expansive approach to a disqualification fundamentally contradicts the humane and beneficial purposes of the statute.

The term "full-time student" has meaning well beyond the unemployment context. It is well-known to describe a person who devotes the majority of his or her time to academic studies for the entirety of an academic year. However, the EAB changed this definition to someone who devotes a significant amount of time to their studies *week to week*. (App. pp. 369-70). Such a definition does not comport with the traditional notion of what constitutes a full-time student. Because the EAB's definition does not comport with standard definitions, the likening of Mr. Dornath's training to the full-time student disqualification is nonsensical. Accordingly, denial of benefits on this ground is erroneous and must be reversed.

In addition, the EAB broadly expanded the full-time student disqualification, despite statutory directives to the contrary. Iowa courts have expressly required disqualifications to be construed narrowly. *Irving v. Emp't App. Bd.*, 883 N.W.2d at 185. Thus, by applying full-time student status to apprentices, the EAB impermissibly construed the disqualification broadly to eclipse more than just full-time students. Such an approach patently violates the purpose and goals of the unemployment statute. Reversal is appropriate.

4. Alternatively, precedent demonstrates Mr. Dornath was temporarily unemployed.

Alternatively, a claimant is temporarily unemployed—and need not demonstrate he is able and available to work—when "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 § 96.19(37)(c).

The EAB's erroneous interpretation of the temporary unemployment requirements, specifically "lack of work," prejudiced Mr. Dornath's substantial rights. IOWA CODE § 17A.19 (10)(c). For the numerous reasons provided herein, this Court should not defer to the EAB's legal interpretations regarding temporary unemployment in this case. *See* IOWA CODE §

17A.19(11); *Renda*, 784 N.W.2d at 13 (finding a grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation").

As previously discussed, Mr. Dornath had time each day during which he was available to work; however, Employer failed to schedule him to perform services during those times. Employer was well-aware of Mr. Dornath's availability, and thus, it can only be reasoned that Employer simply *lacked work* for Mr. Dornath to perform. Consequently, Mr. Dornath should be considered temporarily unemployed for the week in question due to a lack of work.

Here, the EAB simply ignored prior precedent that found claimants to be temporarily unemployed in similar circumstances. *See Michelle Goodwin v. Apts Downtown Inc.*, 20B-UI-05103, p. 4 (EAB 2020) (stating claimant is "not required to be A&A while on temporary layoff"); *Sweeney v. B G Brecke, Inc.,* 19A-UI-03945-JE-T, p. 4 (Unemp. Ins. Apps. 2019) (holding that the claimant was temporarily laid off due to lack of work for his week-long mandatory training); *Hanna*, 18A-UI-09974-H2T, p. 2 (Unemp. Ins. Apps. 2018) (holding that "claimant was able to work for his employer, but did not do so as the employer wanted him attending the class and had not scheduled

him for any work that week.").[8] This is the exact situation that Mr. Dornath experienced; as a mandatory condition of his employment, he was required to fulfill all of the JATC's apprenticeship requirements, including attending mandatory training scheduled for the week of May 10, 2020, and he was consequently not scheduled to work for Employer. Thus, if the Court construes the term "work" narrowly to exclude training, then Mr. Dornath's period of unemployment is a temporary layoff, rendering him temporarily unemployed and thus waiving the requirement to demonstrate he was able and available to work.

Further, rather than addressing the arguments raised showing Mr. Dornath was temporarily unemployed due to lack of work or taking into consideration established precedent, the EAB based its finding by reading language into the statute that is not there. For example, the EAB makes a conclusory assumption that, based on the three words "lack of work," such words "mean[] that the Employer has laid off the worker because there's not

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[8] The District Court failed to take into consideration any of the precedent. Instead, the District Court erroneously relied on *C.F. Sullivan v. Chicago & Nw. Transp. Co.,* 326 N.W.2d 320, 323 (Iowa 1982), a case regarding statutory interpretations of the Iowa Code regarding railroad transportation, to conclude that the legislature's enumerated list to qualify for temporary unemployment is exhaustive and not mere examples. (App. p. 460).

enough work to go around." (App. p. 375).[9] Certainly, the legislature could have connected the word "layoff" to "lack of work" if it wanted to, *see Hornby v. State,* 559 N.W.2d 23, 25 (Iowa 1997) ("[w]e are guided by what the legislature actually said, rather than that which it might or should have said"), as it had done so in other parts of the employment security law. *See, e.g.,* IOWA CODE §§ 96.5(7)(b) (use of term "layoff"), 96.40(2)(b) (same), 96.7(2)(a)(2)(e) (use of term "laid off").[10] Additionally, the EAB's attempt to read "layoff" cannot be harmonized with "not terminated" clause in Section 96.1A(37)(c) (i.e., "the individual's employment, although temporarily suspended, has not been terminated.").

The EAB also asserts that "lack of work" could *not* mean "lack of work for the particular individual." (App. p. 375). While this is not precisely Mr. Dornath's argument, it is certainly inconsistent with the statute. As a matter of statutory construction, the statute modifies "individual" with "lack of work," i.e., "the *individual* is unemployed due to . . . lack of work." Moreover,

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[9] The Iowa Supreme Court recently held that it "would not defer to the EAB's interpretation of various legal terms used in [Chapter 96]." *Sladek v. Emp't App. Bd.*, 939 N.W.2d 632, 637 (Iowa 2020).

[10] Notably, one provision has reference to layoffs for specific reasons. IOWA CODE § 96.3(5)(a) (provision regarding recomputing wage credits for a claimant "who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises").

the term "unemployed" is modified by the phrase "from the *individual's* regular job or trade." The "individual" focus of the section is readily apparent. Taken together the statute provides: "the ***individual*** is unemployed due to … lack of work … from the ***individual's*** regular job or trade." IOWA CODE § 96.1A(37)(c) (emphasis added). Contrary to the EAB's assertions, no modifier relating to an employer exists; the entire section focuses on the individual's unemployment. The EAB's interpretation to apply "lack of work" to the entire workforce is inconsistent with the statute and must not be given any deference.

As previously noted, precedent found claimants to be temporarily unemployed in similar circumstances. *See Michelle Goodwin v. Apts Downtown Inc.,* 20B-UI-05103, p. 4 (EAB 2020); *Hanna*, 18A-UI-09974-H2T, p. 2 (Unemp. Ins. Apps. 2018). Once again, for the same reasons discussed with respect to partial unemployment, ruling in favor of Mr. Dornath as temporarily unemployed is even more appropriate when considering the principles of *Irving*. 883 N.W.2d at 192 (requiring the unemployment statute to be construed broadly as to effectuate its humane and beneficial purposes).

The EAB cannot simply turn a blind eye to precedent and the well-established statutory interpretations therein simply because it provides a holding that the EAB does not like. The Court should reverse this decision.

IV. Mr. Dornath Did Not Take a Voluntary Leave of Absence for the Week in Question.

The EAB erred in numerous respects to its analysis and findings relating to voluntary leaves of absence. Specifically, the EAB applied an improper burden of proof, the EAB construed this disqualification impermissibly broadly, and the EAB ignored substantial evidence demonstrating that Mr. Dornath's training was not a voluntary activity, but rather a mandatory condition of his employment.

A. Preservation of Error

On December 17, 2021, Mr. Dornath filed a timely Notice of Appeal from the District Court's Order on Judicial Review on November 18, 2021, affirming the EAB's decision to deny unemployment benefits. (App. p. 467). Mr. Dornath raises the same issues regarding voluntary leave of absence on this Appeal as were presented to and considered by the EAB and the District Court. (*See* App. pp. 368-69, 408-09, 417-32, 463).

While the EAB's numerous errors of law regarding voluntary leave of absence were raised for the District Court's review, the Court found that because "leave of absence was not a basis for the agency's decisions," the

issue was unpreserved for the Court's review and not subject to reversal. (App. p. 463 (citing *Johnston v. Iowa Dep't of Transp.*, 958 N.W.2d 180, 184 (Iowa 2021)).

Mr. Dornath presumes the District Court is suggesting the leave of absence issue was simply not decided by the EAB. If, *arguendo*, the District Court's finding was that Mr. Dornath did not properly preserver the matter for review – that is entirely incorrect based on both applicable law and the record in this case.[11] As noted above, here Mr. Dornath presented the issues regarding voluntary leave absence to the EAB, the EAB litigated the issue,

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[11] The "claim or issue raised does not actually need to be used as the basis for the decision to be preserved, but the record must at least reveal the [agency] was aware of the claim or issue and litigated it." *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002); *see also*, *Chicago & Nw. Transp. Co. v. Iowa Transp. Regulation Bd.*, 322 N.W.2d 273, 276 (Iowa 1982) ("We have stated that in contested cases, 'our review is limited to those questions *considered* by [the administrative agency.]") (emphasis added) (*citing Gen. Tel. Co. v. Iowa State Commerce Comm'n*, 275 N.W.2d 364, 367 (Iowa 1979)). Thus, "[t]o preserve the error for appeal, a party [need only] raise the issue before the agency." *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm'n*, 453 N.W.2d 512, 527 (Iowa 1990). Here, not only did Mr. Dornath raise the voluntary leave of absence issues before the EAB, but the EAB dedicated multiple pages of its decision to a "Leave of Absence Analysis." (App. pp. 368-69). Moreover, *Johnston*—which the District Court relied on to improperly hold that the voluntary leave of absence issue was unpreserved—is easily distinguishable from the case here. In *Johnston*, the Court found that one of claimant's arguments was unpreserved because it was "neither raised nor decided in the administrative tribunal," which meant "the agency had no opportunity to address or rebut the argument." *Johnston v. Iowa Dep't of Transp.*, 948 N.W.2d 535, 2020 WL 2487949, at *2 (Table) (Iowa Ct. App. 2020), *enforced*, 958 N.W.2d 180 (Iowa 2021).

and the EAB had the opportunity to decide on the issue, but chose not to because it based its denial of benefits on other grounds.

Therefore, Mr. Dornath properly preserved this issue.

B. Standard of Review

The standard of review is for correction of the agency's erroneous interpretations of law, failures to make findings of fact supported by substantial evidence, and abuse of discretion, prejudicing the claimant's substantial rights and warranting a reversal. IOWA CODE § 17A.19 (10)(c), (f), (n); (*See* Part I, "Standard of Review for All Issues on This Appeal").

C. Argument

As noted above, the procedural posture of this matter is such that the EAB has, in briefing before the District Court, disavowed the application of the leave of absence issue to its underlying finding. Notwithstanding such representation in briefing, Mr. Dornath provides support for finding in his favor on the issue of the leave of absence disqualification.[12]

The EAB erred in numerous respects to its analysis and findings relating to voluntary leaves of absence. Specifically: (1) the EAB applied an

[12] To the extent the EAB argues that a remedy of a remand would be required to address the "leave of absence" further, Mr. Dornath disagrees for the reasons stated herein and based on applicable authority. *See, e.g., McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 186 (Iowa 1980) ("Remand is also necessitated in order to permit the agency to re-evaluate the evidence, applying the correct rule of law, unless the reviewing court can make the

improper burden of proof; (2) the EAB construed this disqualification impermissibly broadly; and (3) the EAB ignored substantial evidence demonstrating that Mr. Dornath's training was not a voluntary activity, but rather a mandatory condition of his employment.

As such, this Court should find that the EAB made the following erroneous interpretations of the law and improperly ignored substantial evidence in the record, resulting in an unreasonable, arbitrary, and capricious holding, which warrants a reversal.

1. The EAB applied an improper burden of proof to the leave of absence issue.

The EAB applied the burden of proof for demonstrating the absence of a disqualification on the claimant, contrary to well-established law. Here, based on well-established standards allocating the burden of proof in unemployment matters, it is clear that the EAB arrived at its holding based on an erroneous interpretation of law, and further abused its discretion by improperly assigning the burden of proof to Mr. Dornath. Moreover, the EAB erred by finding a disqualification despite the fact that the Employer failed to

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necessary factual findings as a matter of law because the relevant evidence is both uncontradicted and reasonable minds could not draw different inferences from it.").

meet its burden of proof. As such, the EAB deprived Mr. Dornath of his right to unemployment benefits and thereby substantially prejudiced him.

a. *The EAB erred in attributing the burden of proof for a disqualification to Mr. Dornath.*

In its decision, the EAB unreasonably and arbitrarily imputed the burden of proof for disqualification on Mr. Dornath, thereby prejudicing his substantial rights. IOWA CODE §§ 17A.19(10)(c), 17A.19(10)(n). Such an erroneous interpretation of Iowa law should not be given deference by this Court. *See* IOWA CODE § 17A.19 (11); *Renda*, 784 N.W.2d at 13 (finding a grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation"). Reversal is warranted.

Under Iowa law, the *employer*, not the claimant, must prove disqualifications. *Irving,* 883 N.W.2d at 192. The Iowa Code provides an enumerated list of circumstances that disqualify a claimant from receiving unemployment benefits. IOWA CODE § 96.5. Notably, that statute lacks any provisions related to a voluntary leave of absence, except for medical leaves of absences. IOWA CODE § 96.5(1)(d).

While the Iowa Administrative Code includes a disqualification for voluntary leaves of absence, despite the clear rule that *employers*, not

claimants, hold the burden of proof for disqualifications, the EAB stated that Mr. Dornath "failed to show that he was not on an agreed-to unpaid leave." (App. p. 369). As multiple Iowa Supreme Court decisions have held, it is the employer's responsibility, not the claimant's, to prove disqualification; that did not happen here. *See Irving*, 883 N.W.2d at 192 (stating employers must prove disqualifications); *Bridgestone/Firestone, Inc.,* 570 N.W.2d at 90 (same). Undeniably, it is illogical for a claimant to have the burden of proving that a disqualification does *not* apply because it forces a claimant—with less resources and information than the employer—to prove a negative. Such a scenario surely conflicts with the purpose of the unemployment statute. As such, the EAB erroneously interpreted a provision of law to find that—even though Mr. Dornath provided evidence refuting that he was on a leave of absence—that he failed to prove otherwise.

b. The Employer did not meet its burden of proof for a disqualification.

As stated above, although the EAB's findings of fact are given deference, where substantial evidence does not support these finding, this Court should reverse the decision. *See* IOWA CODE § 17A.19 (11)(c); *Sciacca*, 737 N.W.2d 326, 2007 WL 2004531, at *2 (requiring issues of substantial evidence be resolved by reviewing the record as a whole); *Meyer*, 710 N.W.2d at 219 (providing that a reviewing court is bound by an agency's finding of

fact, unless those findings are not supported by substantial evidence). Such a reversal is warranted here.

Despite the well-established statutory standard that employers—not employees—must prove disqualifications, the substantial evidence highlights Employer never provided evidence to demonstrate Mr. Dornath's time in mandated training was voluntary. Again, Iowa law states "[t]he employer has the burden of proving that the claimant is disqualified for benefits . . . ." IOWA CODE § 96.6(2).

However, Employer's written argument before the EAB lacked any mention of an agreed-to leave of absence. (App. pp. 221-23). Moreover, Employer never inquired during the proceeding before the Administrative Law Judge about any matter conceivably related to a purported leave of absence. (*See* App pp. 20-167).

Further, Employer failed to refute Mr. Dornath's testimony and evidence that his training was not a voluntary leave of absence, but rather a mandatory condition of employment. Mr. Dornath specifically stated during the proceedings before the Administrative Law Judge that should he fail to attend the mandatory training, the JATC would expel him from the apprenticeship program, and he would, in turn, be terminated from his employment with Employer. (App. p. 25, Lines 5-7; App. p. 31, Lines 4-7;

App. p. 32, Lines 2-7). Even more serious, should Mr. Dornath be terminated, he would be precluded from obtaining *any* job under the purview of the JATC for two (2) years. (App. p. 68). Thus, for the week in question, Mr. Dornath could attend the training or be ineligible for apprenticeship employment for at least two (2) years and subject to a finding of ineligibility for unemployment benefits. Despite this, Employer did not refute this testimony at the hearing, and it did not even mention it in its written argument. (App. pp. 221-23). Thus, Employer wholly failed to raise this disqualification and consequently failed to meet its burden. Such a glaring omission cannot be ignored.

Because Employer failed to even address whether Mr. Dornath was on a voluntary leave of absence, it is apparent that Employer failed to meet its burden of proof for this disqualification.

Thus, this Court should find that the EAB improperly ignored substantial evidence in the record as a whole, and reverse.

2. <u>The EAB failed to narrowly construe the leave of absence disqualification.</u>

The EAB's decision was further erroneous as to its discussion of the leave of absence disqualification because it applied an impermissibly broad construction to the disqualification, contrary to well-established law. Such an erroneous interpretation should be afforded no deference by this Court, and

the decision must be reversed, or alternatively remanded with instructions to award Mr. Dornath unemployment benefits.

a. *The EAB applied an impermissibly broad construction to disqualifications.*

The EAB's erroneous interpretation of disqualifications prejudiced Mr. Dornath's substantial rights. IOWA CODE § 17A.19(10)(c). For the numerous reasons provided herein, this Court should not defer to the EAB's impermissibly broad construction to disqualifications implemented to deny Mr. Dornath benefits. *See* IOWA CODE § 17A.19(11); *Renda*, 784 N.W.2d at 13 (finding a grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation").

It is well understood that the EAB must construe disqualifications narrowly. *Irving*, 883 N.W.2d at 192. This narrow construction is necessary in order to effectuate the "humane and beneficial purpose" of the unemployment statutory scheme. *Bridgestone/Firestone, Inc.*, 570 N.W.2d at 96.

In finding that a voluntary leave of absence potentially existed, the EAB erroneously relied on a holding in *Efkamp v. Iowa Department of Job Services* to impermissibly expand the scope of a voluntary leave of absence disqualification. 383 N.W.2d 566 (Iowa 1986). Specifically, the EAB relied

on *Efkamp* to hold that, "[a]ny authority of the JATC is solely the result of voluntary consent of the parties to the CBA." (App. p. 368). This is a massively broad expansion of what *Efkamp* held.

In *Efkamp*, the union specifically agreed to a reduction in pay for its bargaining unit members. 383 N.W.2d at 569. The claimant decided to resign, rather than accept a lower wage, and the Iowa Supreme Court thus found that because the claimant's representative agreed to a reduced wage, that the reduction was not a unilateral change by the employer warranting unemployment benefits. *Id.*

However, here, the EAB impermissibly expanded *Efkamp* to hold that where an employee's representative agrees to create an ERISA benefit fund (i.e., the apprenticeship fund), and then that ERISA benefit fund—acting wholly independently from the union and as a separate and distinct entity—mandates training years later, that the training was agreed to by the claimant. The record highlights that the union was completely uninvolved in the scheduling or administration of apprenticeship training. Mr. Dornath specifically testified that he received his training via the JATC—not the union. (App. p. 29, Lines 31-33). Mr. Dornath's exhibits further exemplify the JATC scheduled and administered training. (App. p. 165). Thus, *Efkamp* is inapplicable because the Local did not agree to the mandatory training. This

expansive application of *Efkamp* is just another example of the EAB's overreach and actions that contravene the beneficial purposes of the statute.

Conversely, the facts and holdings of *Iowa Malleable Iron Co. v. Iowa Employment Security Commission* align better with this matter. 195 N.W.2d 714 (Iowa 1972). There, the union and employer agreed to a vacation shut down; however, the collective bargaining agreement never addressed payment during the shutdown. *Id.* at 718. It was held that because the union never agreed that the shutdown would be unpaid, that claimants were still eligible for unemployment benefits. *Id.*

Here, like in *Iowa Malleable*, the union agreed with the employer to create an apprenticeship trust.[13] Nothing in the record demonstrates that the union ever agreed with Employer about the logistics of training; rather, such logistics were the responsibility of the trustees of the JATC. Therefore, because the union never agreed to such leave, bargaining unit members,

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[13] The EAB discarded the holding in *Iowa Malleable* because after its publication, the Iowa Code was amended to allow for benefits where a claimant is temporarily unemployed due to a shutdown. (App. p. 368). Such an argument is a red herring because it does not negate the fact that the circumstances in *Iowa Malleable* closely align with the circumstances here. Even more, this argument is illogical because the codification of temporary unemployment benefits for a plant shutdown does not contradict the benefits awarded in *Iowa Malleable*; therefore, the decision remains good law. This is one of many examples of the EAB bending over backwards to find a modicum of a reason to deny Mr. Dornath benefits.

including Mr. Dornath, cannot be held to have consented to treating their periods of mandatory training as voluntary leaves of absence.

By illogically imputing the actions of the JATC upon the union, the EAB interpreted precedent so as to impermissibly expand the scope of the leave of absence disqualification, contrary to the directive to narrowly construe disqualifications. The Court should not allow such a result. Since the EAB failed to narrowly construe the disqualification, reversal is necessary.

b. *The EAB improperly construed well-established employee benefit law*

Here, it must be immediately noted that nowhere in Chapter 96 is there a grant of interpretive authority to the EAB. IOWA CODE § 96, *et. seq.*; *see also*, IOWA CODE § 17A.19 (11); *Renda*, 784 N.W.2d at 13 (finding a grant of rulemaking authority does not similarly grant "an agency the authority to interpret all statutory language"); *Sladek*, 939 N.W.2d at 637 (holding that it "would not defer to the EAB's interpretation").

Despite this, and despite well-established statutory law pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*, as well as ERISA case law, the EAB still attempted to apply a wholly incorrect interpretation of the relationship of the union and JATC. Notably, the EAB failed to make any effort to address the substantive law addressed above and previously cited, but rather made an erroneous

conclusion by finding "[a]ny authority of the JATC is solely the result of voluntary consent of the parties to the CBA." (App. p. 368). Thus, this Court should provide zero deference to the EAB's nonsensically broad interpretation.

ERISA precedent highlights that the union and the JATC are separate and distinct entities. The statutory framework of ERISA explicitly contemplates the union and employee benefit fund as separate and distinct entities. For example, ERISA only allows money judgments against employee benefit plans to be enforced against the plan and no one else. 29 U.S.C. § 1132(d). Precedent analyzing ERISA has also held that employee benefit plans are separate and distinct entities. The Supreme Court of the United States decided *four decades* ago that ERISA plans are separate and distinct entities from the union. *NLRB v. Amax Coal Co.*, 453 U.S. 322, 333 (1981). This holds true for non-ERISA, non-union disputes; the Eighth Circuit, for example, held in an age discrimination suit that ERISA benefits could not reduce an award for back pay because the ERISA fund was a separate entity from the defendant employer. *Doyne v. Union Elec. Co.*, 953 F.2d 447, 451 (8th Cir. 1992). Importantly, the United States District Court for the District of Columbia found that employee benefit plan trustees could not be held liable under the Labor Management Reporting and Disclosure Act

(“LMRDA”) for misuse of union funds—even if the employee benefit plan was related to the union—because ERISA makes such plans “‘distinct legal entities separate from the union . . . controlled exclusively by the trustees for the benefit of the plan participants and beneficiaries.’” *Noble v. Sombrotto*, 84 F.Supp.3d 11, 24-25 (D.D.C. 2015) (quoting *Hearn v. McKay*, 603 F.3d 897, 902 (11th Cir. 2010)). Numerous other benefit disputes have also noted that the union is not the same entity as the ERISA plan. *See, e.g., Guerro v. FJC Sec. Servs.*, No. 09 Civ. 7216 (SHS)(RLE), 2010 WL 11530627, at *2 (S.D.N.Y. May 26, 2010); *Ortiz v. Local 32BJ*, No. 07 Civ. 8030 (LTS) (KNF), 2008 WL 2064810, at *4 (S.D.N.Y. May 16, 2008). The extensive precedent demonstrates that the structure of ERISA plans forecloses union involvement in the administration of employee benefit matters, including the administration and organization of apprenticeship training.

In this matter, the JATC’s trustees are equally split between labor and management representatives, who act independently of both the union and the Employer. (App. p. 89). This joint and equal management of the JATC is a federally-mandated feature of all union-associated apprenticeship programs that are funded by employer contributions. *See* 29 U.S.C. § 186(c)(5). Thus, although the trustees who administer the apprenticeship are appointed by employers and unions, this does not mean that the trustees in any way

"represent" their respective appointing entities. As mentioned above, the United States Supreme Court has specifically made that finding. *See NLRB v. Amax Coal Co.*, 453 U.S. at 334 (actions taken by union-appointed trustees are not acting as representatives of the union). Thus, these facts highlight that the JATC alone administers the apprenticeship program—not the union. Since the union does not administer training, there is no logical way the union could have agreed with the employer regarding the scheduling of training. Consequently, there could be no voluntary leave of absence.

By the EAB's logic, however, simply because the union played a role long ago in creating the apprenticeship, it is responsible for subsequent actions undertaken by the JATC's trustees. This illogical conclusion cannot be provided deference, as doing so would contradict decades of precedent and eviscerate the purposes of ERISA. The Court should not allow such attenuated arguments to deprive Mr. Dornath of benefits he rightfully deserves.

3. The EAB ignored substantial evidence demonstrating that Mr. Dornath was **not** on a voluntary leave of absence.

The substantial evidence in this case demonstrated that neither Mr. Dornath, nor his bargaining unit representative, consented to the training period being treated as a leave of absence, and that the training period was actually required for Mr. Dornath to maintain his employment. Thus, by

ignoring this substantial evidence, the EAB erred by reaching a conclusion unsupported by the vast majority of the evidence.

As stated above, the evidence, along with well-established law, demonstrated the union and JATC were separate. *See Amax Coal Co.*, 453 U.S. at 333. Mr. Dornath specifically testified that he received his training via the JATC—not the union. (App. p. 29, Lines 31-33). The record demonstrates the JATC assigned Mr. Dornath to Employer, and that the JATC scheduled his training. (App. pp. 142, 165). This arrangement is consistent with, and required by applicable USDOL regulations. In order to comply with the USDOL's regulations, the JATC established standards that apprentices must meet in order to remain in the program. Specifically, Mr. Dornath was required by the JATC to attend classroom training or "related instruction" under the USDOL's regulations. 29 C.F.R. § 29.2; (*see also* App. p. 88). The JATC standards consequently require Mr. Dornath to attend one hundred eighty (180) hours of classroom training annually. (App. pp. 93-95). The JATC must ensure that apprentices receive the required related instruction; otherwise, the JATC is subject to being "deregistered" by the USDOL. 29 C.F.R. § 29.8(b)(1)(i).

The stringent requirements that the JATC must follow make it necessary for disciplinary measures to be imposed on apprentices for failure

to attend mandatory training, and for it to be a requirement that "[t]he apprentice's work shall not interfere with attending related instructional classes." (App. p. 105). Mr. Dornath expressly stated during his testimony that should he fail to attend training, the JATC would expel him from the apprenticeship program, and he would, in turn, be terminated from his employment with Employer. Even more serious, should Mr. Dornath be terminated, he would be precluded from obtaining *any* job under the purview of the JATC for two (2) years. (App. p. 68). Thus, for the week in question, Mr. Dornath could either attend training or be ineligible for apprenticeship employment for at least two (2) years and subject to a finding of ineligibility for employment benefits.[14] Such a choice inarguably demonstrates that

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[14] The Board's decision and authority in *Ronald B Smith V. Des Moines Ind Comm. School Dist.,* 17B-UI-01245, p. 2 (EAB 2017), is instructive. There the Board stated:

> Where an employee commits acts that impair the employee's ability to function on the job, this can be misconduct even if the acts do not occur at work or during work hours. *See Cook v. IDJS*, 299 N.W.2d 698, 702 (Iowa 1980) ("While he received most of his driving citations during nonwork hours and in his personal car, they all bore directly on his ability to work for Hawkeye."). Conduct that is contrary to established policies of the employer may be disqualifying even if the conduct is away from work. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416 (Iowa 1992) (drug offense). We find that the Employer has carried its burden of proof in the circumstances of this case by proving that the Claimant was subjected to a court-ordered protective order

attending training lacked any modicum of relationship to a voluntary action.[15] Moreover, given the extensive testimony and numerous exhibits in the record, no reasonable mind could accept it as adequate and reach the same conclusion as the EAB. Because the evidence—on a whole—shows that the training was not a voluntary activity, the Court should find that Mr. Dornath's was prejudiced and reverse the EAB's decision.

CONCLUSION

Based on the foregoing, Mr. Dornath respectfully requests that this Court reverse—or alternatively remand—the EAB's erroneous decision to deny him unemployment benefits.

> that made it impossible for him to do his job. *See* IOWA CODE § 664A.3; *R.B. Mattox v. Admin., Div. of Employment Sec., Dept. of Labor, 528 So.2d 661* (La. Ct. App. 1988) We conclude that willful misconduct has been proven, and conclude that the misconduct was clearly job-related. E.g. *Pechacek v. Minnesota State Lottery*, 497 NW 2d 243 (Minn. 1993).

The same thing would occur to Mr. Dornath if he missed the mandatory training, which would have been willful, resulting in his termination as an apprentice and therefore constituting willful misconduct under the unemployment laws.

[15] As previously noted, precedent supports the finding that such mandatory trainings are not a voluntary leave of absence. *See Miller*, 19A-UI-02968-NM-T, p. 3 (finding claimant's absence involuntary because "claimant would be separated from employment if he did not attend the union training"); *Kokemuller,* 17-A-UI-08591-JE-T, p. 2 ("The claimant was required to take an apprenticeship training class in order to maintain his employment . . . . He was not on a leave of absence.").

The EAB's conclusions are riddled with errors, warranting reversal. These errors stem from the EAB's seemingly anti-apprentice animus, which led to the EAB's recent, sudden, and unjustified departure from well-established precedent. Instead, the EAB chose to read in new meaning to unchanged statutes–which were previously used to grant apprentices in mandatory training unemployment benefits–in order to arbitrarily and capriciously deny Mr. Dornath benefits.

Such an approach has led to a range of erroneous interpretations of law and numerous failures to make findings of fact based on substantial evidence. Specifically, the EAB failed to apply the plain meaning of the statutory requirements for partial unemployment, and instead erroneously construed an improperly narrow construction of the word "works," while also ignoring substantial evidence that Mr. Dornath did not work full time during the week in question. Further, the EAB interpreted the full-time student disqualification so as to improperly expand its reach to apprentices. Alternatively, the EAB erroneously interpreted "lack of work" to find Mr. Dornath was not temporarily unemployed. Finally, while not expressly ruling on the issue, the EAB erroneously imputed the burden of proof for an involuntary leave of absence upon Mr. Dornath, while simultaneously applying a broad interpretation of the disqualification and ignoring substantial

evidence demonstrating that Mr. Dornath had no choice but to attend the mandatory training.

The District Court's reliance on the EAB's sudden and unjustified departure from previous statutory interpretations of availability, partial unemployment, temporary unemployment, and the Court's failure to address the issue of voluntary leave, demonstrates a continued violation of Mr. Dornath's substantial rights to unemployment benefits. For these reasons, Mr. Dornath requests that this Court reverse the EAB's decision and grant him unemployment benefits.

REQUEST FOR ORAL ARGUMENTS

Mr. Dornath respectfully requests the opportunity to be heard at oral argument upon the submission of this appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rs. App. P. 6.903(1)(*d*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 font and contains 13,083 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

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CERTIFICATE OF COST

I hereby certify that the actual cost of producing the necessary copies of the Final Brief for Appellant was $0.

/s/ Jason R. McClitis	April 19, 2022
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CERTIFICATE OF SERVICE

The undersigned certifies a copy of Appellant's Final Brief was served on the 19th day of April, 2022, upon the following persons and upon the clerk of the Supreme Court by using the Iowa EDMS, which will send notification of such filing to all attorneys and parties of records and by United States Mail Postage Prepaid:

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