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 REPLY BRIEF FOR APPELLANT

Jason R. McClitis
BLAKE & UHLIG, P.A.
475 New Brotherhood Building
753 State Avenue, Suite 475
Kansas City, Kansas 66101
Telephone: (913) 321-8884
Fax: (913) 321-2396
Email: jrm@blake-uhlig.com
Attorney for Appellant

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STATEMENT OF THE CASE

Appellant, Kyle Dornath, pursuant to Iowa R. App. P. 6.903(4), hereby submits the following reply to the Employment Appeal Board's brief filed on March 15, 2022.

SUPPLEMENT TO STATEMENT OF THE FACTS

Mr. Dornath submits the following in response to the Statement of the Facts provided by the Employment Appeal Board ("EAB"):

As discussed extensively, Mr. Dornath's apprenticeship is not "with the IBEW"–a union–but rather with a separate and distinct entity known as the Fort Dodge Joint Apprenticeship & Training Committee (the "JATC"). (Appellant's Brief, pp. 19-22). Further, as discussed below, the record does not support the EAB's contentions that Mr. Dornath "did not perform services" and that the reason Mr. Dornath "did not work during the week in question was not due to . . . lack of work," on pages twenty-five (25) through twenty-six (26) of the Appendix. (Appellee's Brief, p. 15).

Again, the testimony holds no support for the EAB's contention that Employer "had work for [Mr. Dornath], but was required not to schedule him because the JATC had ordered him into related instruction." (Appellee's Brief, p. 49). While the referenced testimony reveals Mr. Dornath had mandatory training, it does not reveal that the JATC required Employer not to

schedule Mr. Dornath at all during the training week, demonstrating one of the fundamental leaps in logic found throughout the EAB's arguments. (App. pp. 25-26).

ARGUMENT

The EAB's brief entirely focuses on circumstances inapplicable to the present matter. In the most general terms, reviewing the EAB's errors reveals two (2) main issues before the Court: (1) whether the EAB abused its discretion and consequently prejudiced Mr. Dornath's substantial rights by ignoring past practices regarding mandatory training; and (2) whether Mr. Dornath met the requirements for an availability exemption (i.e., partial unemployment or temporary unemployment). The EAB did not meaningfully address these central issues.

The prior precedent from the Iowa Workforce Development ("IWD") tribunals demonstrates that the EAB made an arbitrary departure from well-established statutory interpretation, constituting an abuse of discretion under IOWA CODE § 17A.19(10)(n). By misstating Mr. Dornath's grounds for reversal, the EAB never addressed how its convoluted statutory interpretation in Mr. Dornath's case was not an abuse of discretion. The numerous IWD decisions cited also reveal that unemployment benefits for apprentices in

training is *not* a new issue before Iowa unemployment agencies, and the statutory language supporting such claims have remained unchanged.

For the availability exemptions, the EAB takes a strict statutory interpretation approach that is inconsistent with important principles set forth by the Iowa Supreme Court in *Irving v. Employment Appeal Board*, 883 N.W.2d 179 (Iowa 2016). Notably, the EAB only addresses *Irving* once in its brief as it relates to burden of proof, but never acknowledges or adheres to its guiding principles. Instead, in direct conflict with the *Irving* principles, the EAB failed to consider Mr. Dornath's individual circumstances, and the EAB took impermissible steps to construe the statutes inconsistently with their underlying claimant-friendly policy.

While Mr. Dornath's initial brief amply supports reversing the EAB's underlying decision, this Reply Brief proffers further support. As before, the EAB's unjustified errors warrant reversing its decision to deny Mr. Dornath benefits.

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

The EAB abused its discretion by recently adopting a seemingly anti-apprentice approach to awarding benefits. The EAB suddenly and unjustifiably departed from well-established past practices. While the EAB has repeatedly attempted to frame Iowa administrative rulemaking as

remarkably shifting the unemployment benefit standards such that the law now inhibits apprentices from being awarded benefits, *none* of the statutory language Mr. Dornath relies upon has changed. As such, Mr. Dornath submits, this Court should recognize the weight of this prior precedent as both a demonstration of the EAB's arbitrary departure from well-established statutory interpretation, amounting to an abuse of discretion, and as evidence that the EAB erroneously claimed that this is a new issue before Iowa unemployment agencies.

A. The EAB's recent, sudden, and unjustified departure from past practices is in violation of IOWA CODE § 17A.19(10)(n).

The EAB completely misstated the grounds for reversal claimed by Mr. Dornath by arguing that he "cites no EAB decision from which the decision under appeal deviates without adequate explanation, and so cannot demonstrate error *under § 17A.19(10)(h)*." (Appellee's Brief, p. 53 (emphasis added)). Indeed, Mr. Dornath has *never* argued reversal under Section 17A.19(10)(h), but rather argues the EAB's recent, sudden, and unjustified departure from past practices is an abuse of discretion in violation of Section 17A.19(10)(n). Thus, the numerous IWD decisions are not cited, as the EAB argues, based on a misunderstanding of what constitutes a binding decision. Rather, these numerous decisions illustrate a stark juxtaposition between

years' worth of decisions rendered by the IWD and the decision here by the EAB interpreting the exact statutory claims under nearly identical facts.

This contrast, as previously argued, reveals the EAB's recent adoption of a seemingly anti-apprentice approach to awarding benefits, which departs from well-established practices, constitutes an abuse of discretion. (Appellant's Brief, pp. 28-33). Up until late 2019, the IWD tribunals routinely awarded benefits for training that constituted a mandatory condition of employment. (*Id*.). Specifically, unemployment benefits have been awarded for claimants "attending mandatory training for the employment and . . . not paid wages for that week" because they are "considered partially unemployed." *Berry v. Cmty. Elec. Inc.*, 18A-UI-02905-DL-T, p. 2 (Unemp. Ins. Apps. 2018). Tribunals have similarly awarded claimants unemployment benefits for attending "training [that] was mandatory in order to maintain employment" because they were considered "temporarily laid off due to lack of work." *Sweeney v. B G Brecke, Inc.*, 19A-UI-03945-JE-T, pp. 3-4 (Unemp. Ins. Apps. 2019).

The contrast between the IWD tribunals' several decisions and the EAB's decision concerning Mr. Dornath, all of which present practically identical facts and statutory arguments, signals that the EAB's decision here

is not soundly based in law, and is otherwise arbitrary and capricious. Reversal is appropriate.

B. Despite the EAB's assertions to the contrary, this is *not* a new issue presented to Iowa unemployment agencies and Iowa law has *not* remarkably shifted such that it now inhibits apprentices in training from receiving benefits.

While the EAB argues the IWD's rulemaking in 2018 made the availability issue a "new" one for "the agencies" (Appellee's Brief, p. 38), such an assertion ignores decades of decisions by Iowa unemployment agencies addressing this exact issue under *unchanged* statutes (Appellant's Brief, pp. 28-30).

The EAB illogically contends the Iowa Administrative Code's changes, requiring employers to fund these benefits rather than taxpayers, impacts the interpretation of the availability exemptions under Iowa Code. (Appellee's Brief, pp. 37-38). The fact that employers have begun challenging awards for benefits cannot justify the EAB capriciously abandoning years of precedent declaring apprentices eligible for benefits while attending mandatory training. (Appellant's Brief, pp. 28-29 (citing numerous IWD tribunal decisions finding apprentices in training eligible for benefits)).

Additionally, the EAB unreasonably argues that the regulatory change to exclude apprentices from Department Approved Training in 2018 makes any IWD decision cited by Mr. Dornath before that regulatory change

irrelevant. (Appellee's Brief, p. 51). However, a basic inspection of the cases cited by Mr. Dornath, reveals that *not a single case* turned on an apprentice claiming that he or she was engaged in Department Approved Training 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. (Appellant's Brief, pp. 29-30). Moreover, numerous cases cited by Mr. Dornath were decided *after* the IWD promulgated the regulation. (Appellant's Brief, p. 30).

Furthermore, for the EAB to argue that this departure from past practices is legitimately based, in part, on the USDOL's "Training and Employment Guidance Letter 12-09" suddenly persuading the State to not permit unemployment benefits for apprentice in training, is unreasonable considering the Guidance Letter's 2010 publication date. (Appellee's Brief, pp. 55-57). Meaning, for nearly a decade, Iowa unemployment agencies awarded unemployment benefits to apprentices in identical situations to that of Mr. Dornath, while fully aware of the letter and its contents. Such an assertion demonstrates the patent pretext that fatally flaws the EAB's arguments. Again, the EAB is improperly reading new meaning into long-existing text to disqualify Mr. Dornath. The EAB cites another USDOL

advisory letter, "Unemployment Insurance Program Letter No. 03-22," which provides that government employees working full-time during a government shutdown are not eligible for unemployment benefits because "unemployment must include a reduction in work hours, and not merely a reduction in earnings." (Appellee's Brief, p. 58). However, in citing this advisory letter to argue that Mr. Dornath is not qualified for benefits, the EAB ignores the factual evidence that Mr. Dornath *did* experience a "reduction in work hours" during the week in question. (Appellant's Brief, pp. 44-45).

The EAB also asserts that certain express provisions in Iowa laws—namely Chapter 15B and Chapter 15C regarding apprenticeship programs, IOWA CODE § 96.4(6) regarding state and federal approved training, and IOWA CODE § 96.40(10)(b) regarding training with voluntary shared work programs—indicate the Legislature's intent to exclude apprentices in training from unemployment benefits via the availability exemptions of IOWA CODE § 96.4(3). (Appellee's Brief, pp. 59-60). The EAB's assertion not only ignores the numerous past awards for apprentices in training under these availability exemptions, but such an interpretation also wholly contradicts the principles established in *Irving*. 883 N.W.2d at 190-192 (minimizing the burden of involuntary unemployment and liberally construing unemployment law to

carry out its human and beneficial purpose).[1] Finally, in referencing Iowa's apprenticeship laws, the EAB argues that to provide benefits to apprentices in training would contravene the laws' purpose of "providing incentives to employers to have apprenticeship programs." (Appellee's Brief, p. 60). However, apprenticeship programs and the underlying laws are meant to be multi-beneficial, serving employers, apprentices, and local economies alike. Relatedly, as already discussed, the Iowa Administrative Code's recent change requiring employers to fund these benefits rather than tax payers cannot support the IWD and the EAB abandoning sound legal practices so that employers can escape payment.

In sum, while the EAB has repeatedly attempted to mischaracterize Iowa law to suggest that it now inhibits apprentices from being awarded benefits, this does not comport with precedent and statutory language. In actuality, however, the statutes that Mr. Dornath relies upon have all long existed and repeatedly been employed as grounds for apprentices to receive unemployment benefits during periods of mandatory training. Thus, the EAB's contentions that the *regulatory* changes to Iowa Administrative Code

[1] The fact that "*Irving* does not even mention § 96.4" (Appellee's Brief, p. 18), does not mean that the guiding principles from *Irving*, as it relates to the overall policy of Iowa Employment Security Law, are inapplicable, as the EAB may argue.

somehow affect the *statutory* interpretations permitting unemployment benefits to be awarded to apprentices, is an erroneous foundation on which the EAB built its arguments to improperly deny Mr. Dornath benefits. Reversal is appropriate.

II. Mr. Dornath was not Required to Demonstrate that he was Able and Available.

This background—illustrating a sudden departure from precedent—highlights that the EAB's ultimate error is even more harmful. Indeed, Mr. Dornath—as either partially unemployed or temporarily unemployed—was never required to demonstrate availability, contrary to the EAB's statements.

The EAB erred in numerous respects in its analysis of these exemptions. Specifically, the EAB misconstrued Mr. Dornath's argument that he need not demonstrate availability. Additionally, under its partial unemployment analysis—while conceding that Mr. Dornath is still employed by Employer and earned less than his weekly benefit amount plus fifteen dollars during the mandatory training (i.e., Mr. Dornath met two (2) of the three (3) requirements for demonstrating partial unemployment)—the EAB erroneously interpreted the final requirement of "works less than regular full-time" by narrowly construing the term "works" and imputing non-existent qualifiers to the statutory language. Alternatively, the EAB erred by

erroneously interpreting "lack of work" to find Mr. Dornath was not temporarily unemployed.

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

A. The EAB misconstrued Mr. Dornath's argument that he need not demonstrate availability.

While the EAB argues that the "[s]ole issue in this case is whether the Claimant is available to work . . . " (Appellee's Brief, p. 16), such assertion overlooks the underlying EAB Decision and District Court's Order on Judicial Review, which both discuss the statutory exceptions to availability. (App. pp. 373-77, 456-63).

Relatedly, the EAB misconstrued Mr. Dornath's argument that he need not demonstrate that he was able and available to work for the week in question. (Appellant's Brief, p. 33). The EAB dedicates a significant amount of its brief alleging that Mr. Dornath is implying an improper burden of proof for availability and that Mr. Dornath has failed to prove that he was available during the week in question, disqualifying him from benefits. (Appellee's Brief, pp. 29-33). As Mr. Dornath submits, this Court knows well that he need not prove availability because availability is not a requirement for awarding

partial unemployment or temporary unemployment. IOWA CODE §§ 96.1A(37)(b)(1), 96.4(3).

B. The EAB conceded that Mr. Dornath was still employed by Employer and earned less than his weekly benefit amount plus fifteen dollars.

To prove partial unemployment, a claimant must show that "while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit plus fifteen dollars." IOWA CODE § 96.1A(37)(b)(1).

The EAB repeatedly conceded that "[h]ere it is clear that Claimant is employed in his regular job and that he was paid less than his benefit weekly amount plus $15." (Appellee's Brief, p. 39; App. p. 374). This notably illustrates that the *only* partial unemployment element at issue before the Court is whether Mr. Dornath "work[ed] less than the regular full-time week."

C. The EAB erroneously interpreted the "works less than regular full-time" requirement by narrowly construing the term "works" and imputing non-existent qualifiers within the statutory language.

In analyzing the remaining partial unemployment requirement, the EAB oddly held that Mr. Dornath's training either constituted work for Employer, and thus Mr. Dornath was not partially unemployed because he "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; Appellee's Brief, p. 39).[2] After cutting through the EAB's conflicting and circular positions, it becomes apparent the EAB impermissibly and narrowly interpreted what constitutes working for an employer, and the EAB failed to consider substantial evidence demonstrating that Mr. Dornath did work "less than the regular full-time week." Both are grounds warranting reversal. IOWA CODE §§ 17A.19(10)(c), (f).

What Mr. Dornath is asking the Court to review is nothing new. In *Irving*, only six (6) years ago, this Court ruled against the EAB and discussed, at length, the proper statutory interpretation of the Iowa Employment Security Law. *Irving*, 883 N.W.2d at 190-92.[3] This Court may recall that it was guided by a number of principles in its ruling against the EAB; most notably: (1) each individual case under the unemployment compensation statute must be considered and construed upon the facts as presented; (2) the employment security law's legislative policy includes minimizing the burden of involuntary unemployment; and (3) courts must liberally construe the

[2] The EAB's odd "this" or "that" holding also contradicted its own statement of the facts that stated Mr. Dornath "did not perform services for the Employer that week." (Appellee's Brief, p. 15).

[3] Specifically, the Iowa Supreme Court engaged in a statutory interpretation of IOWA CODE § 96.5 to find, in a situation where a claimant had multiple employers, that disqualification from one employer does not mean the claimant is disqualified as to all employers. *Id*. at 191-95.

employment security law to carry out its humane and beneficial purpose, so much so that doubt is construed in favor of awarding benefits to fulfill the purpose of the law. *Id*. (citations and quotations omitted).

The first principle announced in *Irving*, Mr. Dornath submits, swiftly resolves many of the EAB's arguments. In essence, the EAB failed, time and time again, to consider the individual circumstances of Mr. Dornath's case presented and, instead, incorrectly analogized to a factually distinct case and relied on manufactured hypotheticals.

Turning to the statutory interpretation at issue here, Mr. Dornath is requesting that the Court interpret the phrase "works less than the regular full-time week . . . ." IOWA CODE § 96.1A(37)(b)(1). Mr. Dornath submits that beyond the history of granting benefits discussed above (*see also*, Appellant's Brief, pp. 29-30), proper statutory interpretation, based on the guiding principles of *Irving*, demonstrate error by the EAB (and Mr. Dornath's entitlement to benefits under the employment security law).

First, in analyzing statutory interpretation, 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).[4] The EAB's position regarding the second prong of partial unemployment 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 unemployed" only speaks to "the individual work[ing] *less* than the *regular full-time week*…." IOWA CODE § 96.1A(37)(b)(1) (emphasis added); *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

[4] Related to the EAB's position that if Mr. Dornath was "performing no services" then he was totally unemployed, the EAB provided: "It *seems* like the Claimant would then satisfy the conditions for partial unemployment since in that situation he would work less than full-time since he was in the classroom instruction full-time. *Here the problem is not logic, but law*." (Appellee's Brief, p. 40 (emphasis added)). Such an interpretation by the EAB plainly contradicts the fundamental canon of statutory construction that "words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979); *accord, Iowa Comprehensive Petroleum Storage Tank Fund Bd. v. Mobil Oil Corp.*, 606 N.W.2d 359, 363 (Iowa 2000). Further, the EAB's interpretation violates the "most venerable of the canons of statutory construction," by failing to give the statute "a sensible, practical, workable, and logical construction." *Taft v. Iowa Dist. Ct. ex rel. Linn County*, 828 N.W.2d 309, 317 (Iowa 2013) (quoting *Walthart v. Bd. of Dirs. of Edgewood-Colesburg Cmty. Sch. Dist.*, 667 N.W.2d 873, 877-78 (Iowa 2003)). By arguing that the Court must defy the ordinary meaning of the requirements for partial unemployment and the logical construction of IOWA CODE § 96.1A(37)(b)(1) in order to exclude Mr. Dornath from benefits, the EAB contradicts the basic canons of statutory construction.

unemployed, an individual must be . . . working less than his or her regular full time week.").

Further, the EAB erroneously contends in its brief that any difference in hours between Mr. Dornath's on-site work and his training work is not of a "sufficient magnitude to no longer be full-time." (Appellee's Brief, p. 44). First, the EAB again improperly equates working "full time" with "work[ing] less than the regular full-time week." This imputes a requirement that does not exist within the plain meaning of the statute and muddles otherwise clear statutory language. *See* IOWA CODE § 96.1A(37)(b)(1) (requiring a claimant "works less than the regular full-time week"). To uphold this additional and arbitrary "sufficient magnitude" requirement for the "works less than regular full-time week" element of partial unemployment, would leave future claimants to the *subjective* rule of the EAB rather than the *objective* terms of the statute. As in *Irving*, 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; *accord*, IOWA CODE §§ 4.6(3), 96.2.

The statutory definition of "totally unemployed" similarly demonstrates the flaws in the EAB's interpretations. It is well-established that courts may review related provisions 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) (emphasis added). Accordingly, a claimant who does perform services is not totally unemployed. Rather, such claimant fits within the definition of "partially unemployed"–the exact circumstances here. The Court "should recognize the difference in adjacent statutory provisions, not ignore it." *Irving*, 883 N.W.2d at 194.

Other jurisdictions provide additional support for Mr. Dornath's claims. *Irving*, 883 N.W.2d at 195 ("[W]e find cases in other states of at least some value[.]"). As discussed in Mr. Dornath's initial brief, numerous jurisdiction routinely award benefits for time spent training as a mandatory condition of employment. (Appellant's Brief, pp. 38-39). It is readily apparent that other states, *and previously Iowa until the EAB's recent actions*, found awarding benefits in these circumstances consistent with the intent of employment security laws.

The EAB placed significant reliance on the decision *Hart v. Iowa Department of Job Services*, 394 N.W.2d 385 (Iowa 1986), but failed to

account for the first principle set forth more recently in *Irving*–each individual case under the unemployment compensation statute must be considered and construed upon the facts as presented. The EAB incorrectly analogizes *Hart* by failing to recognize that Mr. Dornath *was* performing services for his Employer by participating in position-specific training, he was acquiring skills necessary to more effectively serve the Company. (Appellant's Brief, pp. 41-43). The EAB attempted to argue that even if Mr. Dornath performed services, unlike the claimant in *Hart*, he was still working "full-time" and did not qualify. (Appellee's Brief, pp. 44-45). Again, as previously discussed, nothing in the definition of "partially unemployed" speaks to performing "full-time services," and instead it speaks to the individual claimant working less than their regular full-time week.

As such, through the substantial evidence on the record, Mr. Dornath demonstrated that his regular on-site work schedule and his mandatory training schedule did not equate to the same amount of time. (Appellant's Brief, pp. 44-45 ("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 about 4.5 hours . . . .") (emphasis added)). In its brief, the EAB correctly noted that "the hours of 'work' for apprentices are set by the applicable CBA" (Appellee's Brief, p. 44), which provides for a forty-two

(42) hour work week (App. p. 54).[5] However, the EAB then erred in finding that "37.5 hours is exactly the numbers of hours per week" provided by the CBA. (Appellee's Brief, p. 44).

In glossing over the difference between Mr. Dornath's regular full-time week hours and his training week hours, the EAB seems to have arbitrarily decided that the 37.5 hours of training is "close enough" to his regular full-time, such that Mr. Dornath is still excluded from benefits. By holding that Mr. Dornath's decrease in work hours (i.e., 4.5 hours) does not satisfy the "less than the regular full-time week" requirement, the EAB imputes an arbitrary qualifier for what constitutes "less" under the statute. This arbitrary qualifier, as expressed by the EAB, may leave claimants who have drastic decreases in hours, such as a forty (40) hour regular week and a one (1) hour irregular week, still failing to meet what the EAB deems "less." To avoid such irrational results in Iowa unemployment cases and to maintain the second and third principles of *Irving*, Mr. Dornath submits that this Court in its interpretative authority should uphold the plain language of the statute by

[5] The EAB asserts that Mr. Dornath only works 40 hours, rather than 42 hours per week. (Appellee's Brief, p. 39). The Collective Bargaining Agreement provides that Mr. Dornath, during his on-site work weeks, works four, ten-hour days with four, half-hour lunches. (App. p. 255). Thus, the number of hours Mr. Dornath is constrained to his work schedule, due to his half hour lunches being in between his five hour shifts, is 42 hours per week.

recognizing that any decrease in hours from a claimant's regular full-time week satisfies the "less" requirement.[6]

Further, the EAB ignored substantial evidence demonstrating Mr. Dornath worked less that the regular full-time week pursuant to the partial unemployment definition–again in contrast with the first principle in *Irving*– by engaging in a hypothetical regarding a fictional "Joe's Garage." (Appellee's Brief, p. 45). The reality is the EAB would rather create its own "facts," and ignore the statutory language and the years of benefits awarded to claimants under this exact same situation. (Appellant's Brief, pp. 28-29, 42-43).

Mr. Dornath submits the Court should reverse the underlying decision denying Mr. Dornath benefits based upon the history of granting benefits under these circumstances, the plain language of Section 96.1A(37)(b)(1), review of adjacent provisions including Section 96.1A(37)(a), and additional support from other jurisdictions. Ruling in favor of Mr. Dornath is even more appropriate when considering the above under the second and third principles

[6] An agency's rule making authority does not similarly grant the agency the authority to interpret all statutory language. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 13 (Iowa 2010). In fact, 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).

of *Irving*; specifically, the legislative purpose of the employment security law includes a goal of minimizing the burden of involuntary unemployment, and a liberal construction resolves doubt in favor of extending benefits. 883 N.W.2d at 190-92. Like in *Irving*, the Court should reject the EAB's arguments and find in favor of Mr. Dornath. The humane and beneficial purpose of the Iowa Employment Security Law is supportive of such result.

D. The EAB erroneously interpreted the "lack of work" requirement for temporary unemployment.

Mr. Dornath also met an availability exemption as being temporarily unemployed due to "lack of work." IOWA CODE § 96.1A(37)(c). The relevant section provides:

> An individual shall be deemed 'temporarily unemployed; if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to 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.
>
> *Id.*

The EAB does little to address Mr. Dornath's arguments and simply reads non-existent language into the statute. For example, the EAB conclusory assumed that, based on the three words "lack of work," such words "mean[] that the Employer has laid off the worker because there's not enough work to

go around." (Appellee's Brief, p. 50).[7] Certainly, the Iowa 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").[8] Additionally, the EAB's attempt to read "layoff" cannot be harmonized with the "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." (Appellee's Brief, pp. 49-50). While this is not precisely Mr. Dornath's argument, it is certainly inconsistent with the statute. As a matter of statutory construction, the statue modifies "individual" with "lack of work," i.e., "the *individual* is unemployed due to . . . lack of work." Moreover, the term "unemployed" is modified by the phrase "from the

[7] Again, notably 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).

[8] 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").

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, there is no modifier in such section that relates to an employer; the entire section focuses on the unemployment of the "individual." The EAB's interpretation to apply "lack of work" to the entire workforce is inconsistent with the statute and must not be given deference.

Perhaps most telling, the EAB does not cite any authority for its position on "lack of work," unlike Mr. Dornath. As noted in Mr. Dornath's brief, precedent found claimants to be temporarily unemployed in similar circumstances. (Appellant's Brief, p. 53).

Once again, for the same reason discussed with respect to partial unemployment, finding Mr. Dornath temporarily unemployed is even more appropriate when considering the above under the second and third principles of *Irving*. 883 N.W.2d at 192 (requiring the unemployment statute to be construed broadly as to effectuate its human and beneficial purpose).

Overall, reversal is appropriate as to the EAB's errors of interpretation and arbitrary departure from past-practice. Mr. Dornath is eligible for benefits under a temporary unemployment.

CONCLUSION

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 statute–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, which were further highlighted in the EAB's brief. Specifically, the EAB misconstrued Mr. Dornath's arguments regarding not needing to demonstrate availability and attempted to exclude the availability exemptions from consideration. Further, while conceding the first and second requirements for partial unemployment, the EAB erroneously interpreted the third requirement by narrowly construing the term "works" and imputing non-existent qualifiers within the statutory language. Alternatively, the EAB erred by erroneously interpreting "lack of work" to find Mr. Dornath was not temporarily unemployed. In turn, the EAB failed to follow the principles in *Irving*.

For these reasons, Mr. Dornath respectfully requests that this Court reverse the EAB's decision and grant him unemployment benefits.

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Respectfully Submitted,

/s/ Jason R. McClitis
Jason R. McClitis

BLAKE & UHLIG, P.A.
475 New Brotherhood Building
753 State Avenue, Suite 475
Kansas City, Kansas 66101
Telephone: (913) 321-8884
Fax: (913) 321-2396
Email: jrm@blake-uhlig.com
Attorney for Appellant

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations 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 5,263 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

/s/ Jason R. McClitis
Jason R. McClitis
Attorney for Appellant

April 19, 2022
Date

CERTIFICATE OF COST

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

/s/ Jason R. McClitis
Jason R. McClitis
Attorney for Appellant

April 19, 2022
Date

CERTIFICATE OF SERVICE

The undersigned certifies a copy of Appellant's Final Reply 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:

Richard R. Autry
Employment Appeal Board
Lucas State Office Building
321 E. 12th Street, Fourth Floor
Des Moines, IA 50319
Counsel for Appellee

Gayla R. Harrison
129 West Fourth Street
P.O. Box 250
Ottumwa, IA 52501
Counsel for Winger Contracting Co.

Clerk of Court
Iowa Supreme Court
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319

/s/ Jason R. McClitis
Jason R. McClitis
Attorney for Appellant