

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**DIANE L SMITH**  
Claimant

**LEIGH BAILEY WERNER DDS PC**  
Employer

**APPEAL 21A-UI-10060-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/20/21  
Claimant: Respondent (1R)**

---

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 30, 2021, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 24, 2021. Claimant participated. Employer participated by Leigh Bailey, DDS, Owner. The administrative law judge took official notice of the administrative record.

**ISSUE:**

The issue in this matter is whether the claimant laid off due to a lack of work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 14, 2020. Claimant was laid off work on that date because the employer had to close its office during the pandemic. Employer did not have any work available to claimant until on or about August 20, 2020.

Employer later attempted to recall claimant to work on or about August 20, 2020 and she did not return to work after that date. The issues of whether an offer of work was made to the claimant, and whether she failed to accept an offer of work should be remanded to the claims department for further proceedings.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.1 provides:

**Definitions.** Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter [96](#) shall be construed as they are defined in Iowa Code chapter [96](#).

24.1(113) *Separations.* All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

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

Iowa Admin. Code r. 871-24.22(2)c provides:

**Benefit eligibility conditions.** For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

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

c. *Intermittent employment.* An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(27) provides:

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

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a

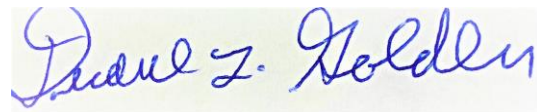
claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

**Note to Claimant:** If this decision determines you are not eligible for regular unemployment insurance benefits and you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final, or if you are not eligible for PUA, you may have an overpayment of benefits.

**DECISION:**

The March 30, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

**REMAND:** The issues of whether an offer of work was made to the claimant, and whether she failed to accept an offer of work is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



---

Duane L. Golden  
Administrative Law Judge

---

July 12, 2021  
Decision Dated and Mailed

dlg/lj