

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELLEN L OHM**  
Claimant

**APPEAL NO: 09A-UI-09567-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INC OF DM**  
Employer

**OC: 01/11/09**  
**Claimant: Appellant (4-R)**

Section 96.4-3 – Able and Available  
871 IAC 24.1(113)a – Temporary Lay-off

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated June 29, 2009, reference 01, that held she voluntarily quit employment due to a non-work-related injury not caused by her employer on May 11, 2009, and benefits are denied. A telephone hearing was held on July 21, 2009. The claimant participated. The employer did not participate.

**ISSUE:**

The issue is whether the claimant is able and available for work.

The issue is whether the claimant was temporarily laid-off from work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant began working for her employer in March 2009, and she was placed on an indefinite assignment at Continental Laboratory. The claimant was notified on May 1 that there would be no work for her in the following week, but she would be returning to employment after that period. The claimant checked with the employer and there was no work available for her from May 4 – May 8, 2009.

The claimant suffered a non-job-related injury (broken left clavicle) on May 4, and she was advised that she would have limited use of her arm for about two weeks. The claimant notified her employer about the injury. The claimant was seen by her doctor on May 19, and he advised her to continue to wear the figure eight splint for the next two weeks. When the claimant healed from her injury, she returned to work the first week of June 2009.

The employer was not available when called for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the claimant was not able and available for work due to a non-job-related injury from May 10 thru May 31, 2009, and is disqualified from receiving benefits for this period.

The claimant's employment separation was temporary due to a non-work-related injury that precluded her from working without restriction during this period. The claimant returned to work on assignment when she healed from her injury.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

The administrative law judge further concludes the claimant should be allowed to backdate her additional claim from May 10 to May 3, 2009, as she experienced a one-week lay-off at her assignment and the employer had no work available for her during this period. The claimant's injury on May 4 delayed the filing of her claim. The temporary lay-off, not the injury, is the qualifying reason the claimant is eligible for one week of benefits. This matter is remanded to backdate the claim to May 3.

**DECISION:**

The department decision dated June 29, 2009, reference 01, is modified. The claimant's additional claim should be backdated to May 3, 2009, and she is allowed benefits for the week ending May 9 due to a temporary lay-off. The claimant is disqualified and ineligible for benefits effective May 10, 2009, as she was not able and available for work due to a non-job related injury.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs