

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIAN A BROWN
Claimant

APPEAL NO. 11A-UI-10144-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 07/18/10
Claimant: Respondent (2R)

871 IAC 24.1(113)a – Short-Term Layoff

STATEMENT OF THE CASE:

Jacobson Staffing Company LC filed a timely appeal from a representative's decision dated July 20, 2011, reference 04, that held claimant eligible to receive unemployment insurance benefits beginning June 26, 2011 finding that the claimant was able and available for work and still employed but his unemployment was due to a short-term layoff. After due notice was issued, a telephone hearing was held August 24, 2011. The claimant, although duly notified, did not respond to the notice of hearing and did not participate. The employer participated by Ms. Kristen Moore, Account Manager.

ISSUE:

At issue is whether the claimant is eligible to receive unemployment insurance benefits because he is on a short-term layoff.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Julian Brown was most recently employed by Jacobson Staffing Company LC from March 4, 2011 until June 3, 2011 when he was removed from work by doctor's order because he was unable to work due to a non-work-related injury. Mr. Brown was assigned to work as a light assembly worker at the Innovative Lighting Company. The doctor's statement that Mr. Brown provided indicated that he would be unable to work until June 22, 2011.

Subsequently Mr. Brown indicated that he would be released effective June 22, 2011 by his physician and the claimant was specifically instructed to return to work at Innovative Lighting on that day, June 22, 2011. Although the claimant had provided a doctor's release and had been instructed to return to work at the client employer location, Mr. Brown did not do so. After the claimant had failed to respond to repeated calls from Jacobson Staffing Company between June 22, 2011 and June 27, 2011 the employer concluded the claimant had chosen to relinquish his position with the company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Brown's unemployment was caused by a short-term layoff. It was not.

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 evidence in the record establishes that Mr. Brown's unemployment was not initiated by the employer because of a short-term layoff. The evidence establishes that Mr. Brown's employment was suspended effective June 3, 2011 because the claimant's doctor determined that Mr. Brown was unable to work due to a non-work-related injury.

The evidence in the record further establishes that although the claimant provided a doctor's release effective June 22, 2011 and the evidence establishes that he was specifically instructed to return to work at Innovative Lighting that day, the claimant did not do so. Ms. Moore testified that the company made repeated efforts between June 22, 2011 and June 27, 2011 to contact Mr. Brown to determine why he had not returned to available employment. Ms. Moore testified that the claimant did not respond to the repeated calls and did not report for available employment. After the claimant had not returned to work as directed and had not responded to repeated calls for a substantial period of time, the employer concluded that the claimant had relinquished his position with the company.

As the issue of whether the claimant was able and available for work and the issue of whether the claimant has been separated from employment were not stated as issues to be considered at the hearing in this matter, the administrative law judge cannot make a decision on the claimant's availability of whether his separation from employment was disqualifying. These issues are remanded to the UIS Division for investigation and the issuance of appealable determinations.

The evidence in the record establishes, however, that the claimant's unemployment was not caused by a short-term layoff but was due to the claimant's failure to report for available employment. The claimant is not eligible to receive unemployment insurance benefits beginning June 26, 2011 as he was not temporarily laid off by the employer at that time.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from

any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated July 20, 2011, reference 04, is reversed. The claimant is not eligible to receive unemployment insurance benefits beginning June 26, 2011. The claimant was not temporarily laid off by the employer at that time. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination. The issue of whether the claimant was able and available for work and whether the claimant was separated from employment under disqualifying conditions is also remanded to the UIS Division for investigation and the issuance of appealable determinations.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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