

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOBBY L BURLEY
Claimant

**L A LEASING INC
SEDONA GROUP**
Employer

APPEAL 15A-UI-04920-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/16/14
Claimant: Respondent (5)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the April 16, 2015, (reference 07) unemployment insurance decision that allowed benefits based upon availability for work. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2015. Claimant participated. Employer participated through unemployment benefits administrator, Colleen McGuinty and administrative assistant, Corey Mesta.

ISSUE:

Was the claimant laid off due to a lack of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer from January 21, 2015, and was separated from employment on March 4, 2015, when he was laid off due to a lack of work. He had worked at Rock-Tenn through other temporary staffing agencies since 2008. His last day of work was February 27, 2015. On February 26, at 10:12 p.m. he left the employer a message that he was snowed in would not be at work but would report the following day. He worked February 27. He was next scheduled March 2 when on-site staffing supervisor on-site Jamal Randall (referred to colloquially at work as “Spook”) sent him home due to lack of work because the client needed only 47 out of 200 people reporting. Those who reported from Davenport who took the bus were given first priority at work. After several days of reporting and being sent home, on March 16 claimant spoke with on-site manager Randy Webster about his concern of commuting to work from West Liberty only to be sent home because of a lack of work, he did not have money to spend on gas. The employer told him work was slow and would not pick up until April. Claimant sought and found work within a few weeks.

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 § 96.5(1) provides:

An individual shall be disqualified for benefits:

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(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 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. 871-24.1 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.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second- and third-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. Randall did not participate and the employer did not have information to rebut claimant's testimony about being sent home due to a lack of work rather than being a no show. Therefore, the separation was attributable to a lack of work by the employer.

DECISION:

The April 16, 2015, (reference 07) unemployment insurance decision is modified without change in effect. The claimant was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css