

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JIM K CAO
Claimant

APPEAL NO: 20A-UI-11035-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE MEADOWS RACETRACK & CASIN
Employer

OC: 06/14/20
Claimant: Appellant (2)

Section 96 5-1 – Voluntary Leaving – Layoff
Section 96.4-3 – Able and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 28, 2020. The claimant participated in the hearing with CTS Language Link Interpreter Tam (9447). Gina Vitiritto, Human Resources Benefit Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issues are whether the claimant's appeal is timely and whether the claimant was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on August 25, 2020. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 4, 2020. The appeal was not filed until September 9, 2020, which is after the date noticed on the disqualification decision. English is the claimant's second language and he did not understand the appeal process and due date. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired as a full-time line cook for Prairie Meadows Racetrack & Casino February 11, 2013. He was laid off due to a lack of work because of COVID-19 from May 3 through June 11, 2020. He returned to work and was laid off again August 5, 2020, and was recalled for work September 27, 2020. The claimant was able and available for work during the times he was laid off.

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 96.4-3 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".

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(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.

The employer's business was slow due to COVID-19 and consequently the claimant was laid off from May 3 through June 11, 2020, and August 5 through September 27, 2020. The claimant's separation was attributable to a lack of work by the employer. Therefore, benefits are allowed.

DECISION:

The August 25, 2020, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

November 2, 2020

Decision Dated and Mailed

je/sam