

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S KREPS
Claimant

APPEAL NO. 12A-UI-03892-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL COMPANY
Employer

OC: 02/05/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Council Bluffs Payroll Company filed a timely appeal from a representative's decision dated March 28, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits beginning February 5, 2012, finding the claimant was still employed on a short-term layoff. After due notice was issued, a telephone hearing was held on May 2, 2012. The claimant participated. The employer participated by Ms. Ann Holoch, human resource generalist.

ISSUE:

At issue is whether the claimant is eligible to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Michael Kreps began employment with Council Bluffs Payroll Company on August 19, 2009, and continues to be employed at the time of hearing. Mr. Kreps works as a full-time general laborer and is paid by the hour.

On December 30, 2011, Mr. Kreps began a medical leave of absence due to a non-work-related illness or injury. Mr. Kreps returned to work on February 12, 2012, after being released by his physician. Due to lack of work, the claimant was placed on a temporary layoff along with other employees. Mr. Kreps reported the intermittent days that employment was available to him with Council Bluffs Payroll Company. Mr. Kreps did not open his claim for unemployment insurance benefits until February 5, 2012, after he had returned to work and had been sent home due to lack of work.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant is able and available for work. It does.

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".

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 the claimant had previously been on a non-work-related medical leave of absence but had returned from the leave of absence prior to opening his unemployment insurance claim with an effective date of February 5, 2012. After the claimant had returned to work on February 2, 2012, he was sent home due to lack of work. The claimant reported earnings for intermittent days that he was provided work by the company.

For the reasons stated herein, the administrative law judge concludes that the claimant has met the able and available requirements of the law. The claimant is eligible to receive unemployment insurance benefits while on a short-term layoff from work.

DECISION:

The representative's decision dated March 28, 2012, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits beginning February 5, 2012, as long as he meets all other eligibility requirements of the law. The claimant is determined to be able and available for work and eligible for benefits during a short-term layoff.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw