

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY L SMITH
Claimant

APPEAL NO. 11A-UI-14876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALS CORNER OIL CO
Employer

OC: 10/16/11
Claimant: Respondent (1)

871 IAC 24.1(113)(a) – Temporary Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 14, 2011, reference 01, decision that allowed benefits based on an Agency conclusion that the claimant was temporarily laid off. After due notice was issued, a hearing was held on December 9, 2011. Claimant Cathy Smith participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUES:

Whether the claimant has been temporarily laid off since October 16, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cathy Smith has been employed by Al's Corner Oil Company on a part-time, on-call basis since March 2011. Ms. Smith had previously worked for the employer in an employment that ended in February 2010. Pursuant to the part-time, on-call nature of the employment, Ms. Smith works only when the employer needs her. Ms. Smith does not work every week for the employer. Instead, the employer has Ms. Smith work if the employer's other regular staff are not available.

Ms. Smith established a claim for benefits that was deemed effective October 16, 2011. The employer had scheduled Ms. Smith to work on October 15 and 16, but then did not have Ms. Smith work because a manager was going to work so that he could train new employees. Ms. Smith worked on October 29, November 5, 6, and 20, and December 3 and 4. Ms. Smith is scheduled to perform work for the employer on December 10, 2011.

Ms. Smith recently started additional part-time employment with the United States Postal Service. Ms. Smith is currently working full-time for the Post Office while she is in training, but will transition to Saturday-only work once the training is completed.

Since Ms. Smith started back with Al's Corner Oil Company, she did have one additional employer, Manning Seivert Mechanical Contractors, from which she separated during the fourth quarter of 2010.

REASONING AND CONCLUSIONS OF LAW:

The hearing notice set only the issue of whether Ms. Smith was on a short-term layoff for hearing. Because the employer did not appear for the hearing, the administrative law judge was unable to add issues to the hearing.

Iowa Workforce Development rule 871 IAC 24.1(113)(a) provides as follows:

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.

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed from the individual's regular job or trade in which the individual worked and will again work, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

Each time Ms. Smith completes the work the employer has for her on an intermittent basis, Ms. Smith fulfills her obligation to the employer and is effectively laid off until the employer next has work for her. The administrative law judge concludes that the Workforce Development representative correctly concluded that Ms. Smith was eligible for unemployment insurance benefits effective October 16, 2011 based on temporary layoff. The employer's account may be charged.

DECISION:

The Agency representative's November 14, 2011, reference 01 is affirmed. The claimant is eligible for unemployment insurance benefits effective October 16, 2011 based on an intermittent temporary layoff. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw