

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILL J MANGANO
Claimant

APPEAL NO. 09A-UI-10387-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABC OF IOWA
Employer

**Original Claim: 06/07/09
Claimant: Respondent (1-R)**

Section 96.4-3 - Able to and Available for Work
871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 16, 2009, reference 02, that concluded the claimant was on a short-term layoff. A telephone hearing was held on August 6, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Greg Spenner participated in the hearing on behalf of the employer.

ISSUE:

Is the claimant able and available for work?

Was the claimant laid off due to lack of work?

FINDINGS OF FACT:

The employer is a non-profit construction trade association. One program offered by the employer is a construction trade apprentice training program, which is a formal training process registered through the United States Department of Labor Office of Apprenticeship. Classroom instruction is provided during the months of September through December and January through May. No classes are offered over the summer months.

The claimant has worked part-time as an electrical instructor since September 2007. He taught classes from September 2007 through May 2008 and was off work over the summer months. He worked part-time as an instructor from September 2008 through May 2009 and has been off work over the summer of 2009. There is a verbal commitment between the parties that the claimant will return as an instructor in September 2009.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 7, 2009. The claimant also owns his own electrical contracting business, Mangano Electric Inc. Although the claimant listed Mangano Electric Inc. as his last employer (Account 318330), the only wages reported during his base period of January 1, 2008, through December 31, 2008, were from ABC of Iowa, Inc.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3. The employer is not challenging the claimant's availability for work in this case, only that the claimant knew when he started that he would not have classes over the summer months. The unemployment benefits are not reserved for persons who are unemployed unexpectedly, and the unemployment law does not disqualify workers from receiving unemployment because they knew or even agreed that the employment was for a specific period or was seasonal. The employer also admits the claimant was not discharged or quit employment. Instead, the claimant's separation meets the definition a layoff, which is defined as a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as "termination of seasonal or temporary employment." 871 IAC 24.1(113)a.

The next issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible person shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the person is still employed by a base period employer at the time the person is receiving benefits and is receiving the same employment from the employer that the person received during the base period or the person has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The claimant was not discharged, did not quit employment, and did not refuse work. The provision exempting employers from charge when a person is "still employed with a base-period employer at the time the person is receiving benefits" does not apply to the claimant, since he was laid off for the summer and is not working. Otherwise, a concrete company who employs workers seasonally and lays them off over the winter months could claim its account was not chargeable because the person was still employed and receiving the same employment as received during the base period.

There was an issue raised during the hearing that could disqualify the claimant and exempt the employer's account from charge in this case. That is the issue of whether the claimant is subject to the unemployment insurance law's "between terms" provision that denies benefits to certain educational employees between school terms.

Iowa Code § 96.4-5-a provides that a person employed by an educational institution in an instructional or administrative capacity during one academic year or term who has reasonable assurance of employment in the same capacity in the next academic year or term is not eligible for benefits based on such employment during the time between academic years or terms.

This issue was not included on the hearing notice. Therefore, I am not permitted to decide the issue under 871 IAC 26.14(4). The issue of whether the claimant is subject to the unemployment insurance law's "between terms" provision is remanded to the agency to investigate and make a determination.

DECISION:

The unemployment insurance decision dated July 16, 2009, reference 02, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided he is otherwise qualified. The issue of whether the claimant is subject to the unemployment insurance law's "between terms" provision is remanded to the agency to investigate and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw