

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI A BOOK
Claimant

APPEAL NO. 14A-UI-03773-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**I-35/105 WELCOME CENTER INC
TOP OF IOWA WELCOME CENTER**
Employer

**OC: 03/09/14
Claimant: Respondent (1R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Top of Iowa Welcome Center filed a timely appeal from a representative's decision dated March 31, 2014, reference 02, which held claimant eligible to receive unemployment insurance benefits beginning March 9, 2014 finding that the claimant's unemployment was due to a short-term layoff. After due notice was provided, a telephone hearing was conducted on April 29, 2014 at which time the claimant participated. The employer participated by Mr. John Grieve, Attorney at Law and witness Ms. Jean Stowell, Center Director. Employer's Exhibit A was received into evidence.

ISSUE:

At issue in this matter is whether the claimant was laid off work temporarily and was eligible to receive unemployment benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jodi Book began employment with I-35/105 Welcome Center, Inc., doing business as Top of Iowa Welcome Center, on November 2, 2010. Ms. Book was hired to work as a janitor working 35 hours per week and was paid by the hour. Her immediate supervisor was Ms. Jean Stowell, Center Director.

Ms. Book had been generally informed by the center director that some repairs would be taking place in the future, at the interstate rest area facility where Ms. Book was employed. The director did not tell Ms. Book in advance the dates, or duration of the repairs, as they were initially unknown to the employer.

On Wednesday, March 5, 2014, Ms. Stowell sent the claimant a text message to inform the claimant that she was being temporarily laid off because of the repairs. The text message sent to Ms. Book, and received by the claimant, stated, "You are off the schedule until further notice." The claimant was not given any further information as to the length of the layoff in the text

message. Ms. Book was not given any information about the layoff's duration in the message, and filed a claim for unemployment benefits, with an effective date of March 9, 2014.

On Friday, March 14, 2014, Ms. Stowell attempted to recall the claimant back to work by the same method, sending Ms. Book a text message stating, "You work Monday." The employer also attempted by telephone, as well as the text message to inform the claimant that work again would be available to her on Monday, March 17, 2014.

Ms. Book did not report back to work on Monday March 17, or thereafter, even though an attempt had been made to recall her to work, by telephone and text message. The claimant testified that she did not receive any telephone calls, messages or text messages about being recalled back to work, and believed that she continued to be on a layoff from the employer. Ms. Book was found eligible and received unemployment insurance benefits in the amount of \$125.00 for the week ending March 15 and the week ending March 22, 2014. The claimant was denied unemployment insurance benefits after the week ending March 22, 2014 because she was determined to be not available for work.

It is the employer's position that the claimant knew or should have known that she was being recalled to work effective Monday, March 17, 2014, because the employer had tried to reach the claimant by telephone and sent a text message. It is the employer's further position that because the claimant had elected in the past not to work certain days of the week, the effect of the layoff on her pay was minimal.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was temporarily laid off by the employer effective March 10, 2014. It does.

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 claimant was informed via text message on March 5, 2014, "You are off the schedule until notice." Work was not available for Ms. Book that week because the facility where she was employed was being repaired and that because of the nature of the work, another worker was needed instead of the claimant. Because the claimant had been laid off work through no fault of her own, she filed a claim for unemployment insurance benefits and was found qualified to receive benefits beginning March 9, 2014. It was determined that the employer did not have work available for Ms. .Book, and that she was otherwise qualified to receive unemployment insurance benefits.

The next question before the administrative law judge is whether the claimant was recalled to work by either by personal contact or registered letter. It does not.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Admin. Code r. 871-24.24(11) provides:

(11) Bulletin board notice of work. A bulletin board notice for employees to work during a plant shutdown shall not constitute an offer of work by the company. Such offer of work must be by personal contact to the employee.

In order to ensure that individuals who have been offered work or who are being recalled to work after temporarily being laid off from work are properly notified of the job offer or the recall, provisions of the Iowa Administrative Code have been enacted to establish whether a "bona fide" offer of work has actually taken place, and therefore it had been received by the claimant. The provisions of the Iowa Administrative Code require that the employer must either have personal contact with the claimant to offer work or recall a claimant from layoff or, in the alternative, the employer has sent a registered letter to the claimant to ensure that an actual offer of work or recall to work has been made and that the claimant has personally been notified of the offer.

In the case at hand, the employer elected to recall Ms. Book to work by using text messaging. While the employer may have considered this method to be appropriate based upon past practices and the difficulty in reaching Ms. Book by telephone, the method of recall in this case did not meet the standards set in the Iowa Administrative Code provisions. The reason that the Code provisions were enacted were in part, to avoid situations such as the one at hand where the employer believes that the offer or recall has reached the claimant, but the claimant denies receiving the message about a job offer or recall. If there is personal contact between the employer and the claimant, or a registered letter is sent for this purpose, a legal presumption arises that the offer has been effectively communicated between the parties. Because the employer elected to recall Ms. Book without personal contact or the use of a registered letter no presumption of receipt by the claimant arises. Ms. Book, in her sworn testimony, denies receiving the recall text message that was sent to her by her employer, and did not receive any telephone calls about her job, and therefore she was not informed to return to work on Monday, March 17, 2014. Ms. Book claimed and received unemployment insurance benefits for the weeks ending March 15, 2014, and March 22, 2014. After that date the claimant was disqualified from the receipt of unemployment insurance benefits based upon availability issues.

Although the administrative law judge is sympathetic to the employer's situation in this matter, the evidence in the record nonetheless establishes that the claimant was temporarily laid off work effective March 9, 2014 and that the claimant was not recalled to employment by either personal contact between the employer and Ms. Book or by registered letter sent by the employer to the claimant for recall purposes. Because the claimant was laid off work and had not been recalled to work by a bona fide offer of work, she was qualified to receive unemployment insurance benefits for those two weeks providing that she met all other eligibility requirements of Iowa law.

Because it appears that a subsequent separation from employment may have occurred in this matter, the issues of whether the claimant has been separated from employment and whether the separation is disqualifying under the provisions of the Employment Security Law are remanded to the Claims Division for investigation and the issuance of an appealable decision.

DECISION:

The representative's decision dated March 31, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits beginning March 9, 2014 as the claimant was on a short-term layoff and had not been recalled to work by a bona fide offer of work. The claimant is eligible to receive unemployment insurance benefits for the weeks ending March 15, 2014 and March 22, 2014 because she was on a temporary layoff from work. The issue of whether the claimant has been separated from employment and if that separation is disqualifying is remanded to the Claims Division for investigation and the issuance of an appealable determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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