

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHY A NEELY**  
Claimant

**APPEAL NO. 11A-UI-02780-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BETHANY ENTERPRISES INC**  
**Q-C MART**  
Employer

**OC: 10/17/10**  
**Claimant: Respondent (5)**

871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 4, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 30, 2011. Claimant participated. Stacy Weeks, manager, represented the employer.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates gas stations in the Quad Cities area. Kathy Neely was employed as a full-time cashier from January 2010 and last performed work for the employer on August 9, 2010. Stacy Weeks, manager, was Ms. Neely's immediate supervisor. The store where Ms. Neely worked also had an assistant manager, Ann Berberich. On or about August 2, 2010, Ms. Neely fell and suffered a head injury. The fall took place while Ms. Neely was off-duty and away from the workplace. Ms. Neely was off work due to the injury from August 2 through August 8.

Ms. Neely attempted to return to work on August 9, 2010. Ms. Neely was experiencing trouble with her vision. Ms. Neely worked approximately one and a half hours before she and the employer concluded she could not perform her duties. At that point, Ms. Neely commenced an approved leave of absence. Ms. Weeks told Ms. Neely that she would need to provide a full medical release before the employer would allow her to return to the employment. But, the employer had already initiated the process of hiring a replacement cashier. On August 14, Ms. Neely provided the employer with a doctor's note that said she could return to work on August 15, 2010. On August 15, Ms. Neely provided the employer with a doctor's note that excused her from work for the period of August 15-17. On August 17, Ms. Neely provided the employer with a doctor's note that indicated she could return to work on August 25. On August 17, the employer hired a new employee to take Ms. Neely's place. On August 23,

Ms. Neely provided the employer with a doctor's note that said she needed to continue off work until she was seen again on August 31, 2010.

On September 14, 2010, Ms. Neely provided the employer with a doctor's note that released her to return to work without restrictions. Ms. Neely provided that note to the employer by the same means she had provided the rest, by leaving it with the employee on duty at the store. Ms. Weeks told Ms. Neely she would get her on the schedule to work one day per week. Ms. Neely continued to check in with the employer, but the employer did not provide her with further work.

Ms. Neely established a claim for unemployment insurance benefits that was effective October 17, 2010.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Workforce Development rule 871 IAC 24.1(113) 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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

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 Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

- a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

When an employer fails to re-employ a worker at the end of an approved leave of absence the worker is deemed laid off and is eligible for benefits. See 871 IAC 24.22(2)(j)(1).

The weight of the evidence in the record establishes that the employer began to take steps inconsistent with Ms. Neely's future return to the employment as soon as Ms. Neely began to be absent from work. The employer took a step that was clearly inconsistent with Ms. Neely's return to the work by hiring a replacement on August 17, 2010. While both parties' testimony presents reasons to discount the credibility of the testimony, the administrative law judge concludes it is more likely than not that, after consistently providing the employer with notes regarding her ability to return to the employment, Ms. Neely provided a like note on September 14, 2010 that released her to return to work without restrictions. The weight of the evidence indicates that Ms. Neely attempted to return to the employment at the end of an approved leave and that the employer failed to make work available for her. Ms. Neely is deemed laid off and is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

**DECISION:**

The Agency representative's March 4, 2011, reference 01, decision is modified as follows. The employer failed to re-employ the claimant at the end of an approved leave of absence. The claimant was laid off effective September 14, 2010. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw