

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMINE N RUDE
Claimant

APPEAL NO. 09A-UI-00087-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIF STOP 5 PHILLIPS 66
Employer

OC: 01/06/08 R: 02
Claimant: Respondent (2)

871 IAC 24.1(113)a – Separations From Employment
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Swif Stop 5 Phillips 66 (employer) appealed a representative's December 24, 2008 decision (reference 05) that concluded Jasmine Rude (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 15, 2009. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Tom Wierson, Personnel Manager, and Larry Parr, Store Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 5, 2008, as a full-time cashier. The claimant has been and still is employed in that capacity. There has been no break in employment. The claimant is currently employed as a full-time cashier.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits.

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.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a full-time worker. She is still employed in a full-time position as was agreed to at the time she was hired. The claimant is not considered unemployed. She is not eligible to receive unemployment insurance benefits because she is not unemployed. The claimant is disqualified for being unavailable for work.

DECISION:

The representative's December 24, 2008 decision (reference 05) is reversed. She is not eligible to receive unemployment insurance benefits because she is not unemployed. The claimant is disqualified for being unavailable for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs