

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NANCY A STODDEN
Claimant

J&D RESTAURANTS INC
Employer

APPEAL 18A-UI-09636-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/26/18
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the September 13, 2018 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was laid off due to a lack of work. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on October 3, 2018. The claimant, Nancy A. Stodden, participated via telephone. The employer, J&D Restaurants, Inc., participated through Alison McAninch, Office Manager.

ISSUE:

Was the claimant laid off due to a lack of work?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a crew member, from May 19, 2017, until July 20, 2018, when claimant was effectively laid off due to a lack of work. Throughout her employment claimant worked at the employer's location on SW 9th Street. Claimant last reported to work on July 18, 2018. Claimant was traveling to her shift on July 20 when she heard the restaurant had caught fire. When claimant arrived at the restaurant, she confirmed that it had caught fire. As of that day, there was no continued work available at the SW 9th Street location.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$460.00, since filing a claim with an effective date of August 26, 2018, for the five weeks ending September 29, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. General Manager Alice Marler participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible.

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 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.

In this case, the employer's SW 9th Street location caught fire. The restaurant closed and there was no longer work available with the employer at that location. Therefore, this separation is properly classified as a layoff due to a lack of work. Benefits are allowed, provided claimant is otherwise eligible. Because claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The September 13, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn