

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES E CLARK
Claimant

APPEAL 15R-UI-13888-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WADDELL CONCRETE INC
Employer

OC: 02/15/15
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving - Layoff
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 23, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was initially scheduled to be held on November 13, 2015. A default decision was issued on November 13, 2015. The claimant appealed to the Employment Appeal Board who remanded on December 16, 2015. A telephone hearing was held on January 21, 2016. Claimant participated. Employer did not participate.

ISSUES:

Was the claimant laid off due to lack of work?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a carpenter beginning in September 2015 through October 1, 2015 when he was laid off due to lack of work. He remains an employee and has continued to ask the employer for additional work, but none has been available.

In October 2015 the claimant was experiencing a problem with his hand, but has since been released to work by his treating physician.

The claimant has worked for other employers since this employer laid him off due to lack of work, demonstrating that he is able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 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.

The claimant was laid off due to lack of work on October 1, 2015. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The claimant is able to and available for work effective October 1, 2015 as he was released to return to work by his physician. He has worked for another employer since his layoff, demonstrating that he is able to and available for work.

DECISION:

The October 23, 2015, (reference 02) decision is reversed. The claimant was laid off due to a lack of work. The claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css