

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SAMANTHA M MCCARTY
Claimant

APPEAL 22A-UI-18057-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOWEN CLEANING SERVICE LLC
Employer

**OC: 08/28/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2022, (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 7, 2022. Claimant participated. Employer participated by Deana Stout, Janitorial Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

The issue in this matter is whether the claimant was laid off due to a lack of work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for Mowen Cleaning Services LLC as a part-time janitor on June 7, 2021. Mowen Cleaning Services LLC contracts with clients to provide those clients custodial services. Claimant provided weekly custodial services for two clients, ADM and a dialysis unit. Claimant's work schedule varied, but she worked approximately 25-hours per week split between the two accounts.

On August 8, 2022, claimant requested a leave of absence due to a medical condition. Employer granted claimant's leave of absence. Claimant was out on a medical leave of absence from August 8, 2022, through August 11, 2022. While claimant was absent, claimant's mother covered claimant's account cleaning ADM and employer assigned a different employee to cover claimant's account cleaning the dialysis unit.

When claimant returned from her medical leave of absence on August 12, 2022, claimant resumed her position cleaning ADM, but she did not return to cleaning the dialysis unit because her account was still assigned to another employee. On August 25, 2022, employer informed claimant that ADM was closing and her account providing custodial services to ADM was ending effective immediately.

From August 25, 2022, to September 16, 2022, claimant performed no services for employer. However, claimant and employer remained in contact and discussed other potential accounts, but nothing was available at that time. On September 17 and 18, 2022, employer assigned claimant to work providing custodial services for a local rodeo, but the work was temporary. After September 18, claimant performed no other services for employer. On September 29, 2022, employer texted claimant about possibly returning to clean the dialysis unit. However, it is unclear from the record whether the claimant received or responded to the text message.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

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.

Iowa Code section 96.1A(37) provides:

"Totally unemployed", "partially unemployed", and "temporarily unemployed."

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed "partially unemployed" in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed "temporarily unemployed" if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

In this case, the evidence fails to show claimant voluntarily quit her employment, as there is no evidence claimant intended to sever the employment relationship or committed an overt act carrying out such intention. See *Local Lodge # 1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Rather, claimant's separation was attributable to a lack of work by the employer. Accordingly, benefits are allowed.

DECISION:

The October 7, 2022, (reference 02) unemployment insurance decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

November 21, 2022
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.