

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAY L PHELPS

Claimant

APPEAL NO. 13A-UI-14245-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/17/13

Claimant: Appellant (2)

871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

Gay Phelps (claimant) appealed a representative's December 23, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Advance Services (employer) for falsification of her application. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 21, 2014. The claimant participated personally. The employer participated by Michael Payne, Risk Manager. The employer offered and Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 August 12, 2013, as a full-time machine operator assigned to work at Pure Fishing. The assignment ended on November 18, 2013. The claimant checked in but there was no work for the claimant. The employer was ready to place the claimant at Eaton Corporation on December 5, 2013, when it found out the claimant incorrectly answered a question on her Application for Employment. She answered no to the question, have you ever been convicted of a violation of law other than a minor traffic violation. The claimant signed the application or certified that her answers were correct. The employer did a background check and found the claimant was convicted of possession of drug paraphernalia in 2010. The employer told her she was not qualified to work for Eaton Corporation but they would consider her for other jobs for which she was qualified.

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 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.

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.

The employer laid the claimant off for lack of work on November 18, 2013. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. The claimant is eligible to receive unemployment insurance benefits for that period.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witnesses to the events. The employer was not in the office the claimant was dealing with.

DECISION:

The representative's December 23, 2013, decision (reference 01) is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs