

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DELPHINE A SMITH
Claimant

WESLEYLIFE
Employer

APPEAL 18A-UI-09894-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/19/18
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 18, 2018 (reference 03) unemployment insurance decision that allowed benefits based upon a determination that claimant was dismissed due to staff reduction or position elimination. The parties were properly notified of the hearing. A telephonic hearing was held on October 12, 2018. The claimant, Delphine A. Smith, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Wesleylife, participated through witnesses Channon Loffredo, Director of People and Culture; and Emily Liberty, Director of Assisted Living; and Raul Ybanez of Equifax/Talk represented the employer. The administrative law judge took official notice of the administrative record.

ISSUES:

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 full-time, most recently as a resident assistant, from October 26, 2015, until July 31, 2018, when she was laid off due to a lack of work. In May 2018, claimant was notified that the employer's contract was expiring at her location, Adel Assisted Living. After July 31, 2018, there was no continued work available for claimant at the Adel Assisted Living location. Claimant had applied for and accepted a position at a different facility, but she never started that position. A week prior to July 31, claimant told the employer she would not be transferring to the new facility. Instead, claimant moved out of state.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,266.00, since filing a claim with an effective date of August 19, 2018, for the seven weeks ending October 6, 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. Loffredo 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, claimant's employment ended when she was laid off due to a lack of work. While she chose to move out of state upon her layoff instead of accept a new position with this employer, that job offer came before the start of claimant's benefits year. 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 18, 2018 (reference 03) unemployment insurance decision is affirmed. Claimant was laid off due to a lack of work. Benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn