

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEAN C BRADLEY**  
Claimant

**APPEAL NO. 17A-UI-11731-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEGIANT AIR LLC**  
Employer

**OC: 10/08/17**  
**Claimant: Respondent (1R)**

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

**STATEMENT OF THE CASE:**

Allegiant Air (employer) appealed a representative's November 6, 2017, decision (reference 02) that concluded Dean Bradley (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 7, 2017. The claimant participated personally. The employer participated by Mary-Beth Marsar. Exhibit D-1 was received into evidence. The claimant offered and Exhibits A and B 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 December 12, 2016, as a part-time customer service agent. The employer has a handbook. The claimant did not receive a copy of the employer's handbook. All the employer's documents are electronic. The handbook states that work-related injuries should be reported to the PC365 Nurse.

In March 2017, the claimant suffered from a work-related injury to his back while lifting luggage at work. He reported it to his supervisor. The supervisor did not send him to a doctor or give the claimant any instructions about what to do. Unbeknownst to the claimant, the supervisor reported the injury to the PC365 Nurse.

In September 2017, the claimant was in pain and went to the emergency room. The physicians there sent him to the Iowa Clinic on September 19, 2017. The doctor at The Iowa Clinic wrote a note that said, "Patient is to remain off work until he is able to have surgery. Awaiting Authorization for surgery to set up a date for surgery with work comp." The claimant was diagnosed with a herniated disc. The employer's workers' compensation insurance carrier paid for the claimant's medical appointments.

On October 11, 2017, the claimant was in a lot of pain and surgery had still not been scheduled. He went to the emergency room again. The doctor released him to return to work as of October 16, 2017, with a five-pound lifting restriction. The employer received the new restriction but told the claimant he could not return to work until he was released without restrictions. Surgery has not been scheduled for the claimant.

The claimant filed for unemployment insurance benefits with an effective date of October 8, 2017. The employer provided the name and number of Lindsay Kavanaugh as the person who would participate in the fact-finding interview on June 30, 2017. The fact finder called Ms. Kavanaugh but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. An employee with firsthand information was not provided for rebuttal.

### **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 as of October 15, 2017.

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(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.

From September 19, 2017, until October 16, 2017, the claimant was restricted from working due to his work-related injury. The doctor released him to return to restricted work on October 16, 2017. The employer laid the claimant off for lack of work on October 16, 2017. 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. Benefits are allowed as of October 15, 2017, provided the claimant is otherwise eligible.

The issue of whether the claimant is able and available for work is remanded for determination.

**DECISION:**

The representative's November 6, 2017, decision (reference 02) is affirmed. The claimant's separation was attributable to a lack of work by the employer. Benefits are allowed as of October 15, 2017, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work is remanded for determination.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs