

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA M LONEY
Claimant

APPEAL NO: 06A-UI-08889-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM DISTRIBUTION MGMT INC
Employer

**OC: 01/15/06 R: 04
Claimant: Respondent (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 25, 2006, reference 01, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on September 20, 2006. Claimant participated personally. Employer participated by Peg Heenan, Employer Representative TALX with witness Mauricio Castaneda, Human Resources Manager. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant took a voluntary layoff for the week of July 29, 2006 and August 19, 2006. If claimant had not taken the layoff, other employees would have been laid off. Employer approved the voluntary layoff so as to minimize labor expense during a time of low need.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 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 section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Claimant was on layoff, with employer's permission, to control labor costs. If claimant had not taken the layoff, employer would probably had forced lower seniority workers to take time off. The layoff was approved by the employer. This is not a disqualifiable reason, as claimant was able and available for work. The unemployment insurance rules provide that an individual who fails to exercise seniority rights to bump a less senior employee is not disqualified from receiving unemployment insurance benefits for refusing work. 871 IAC 24.24(5). Based on this rule, the claimant's failure to exercise her right to bump a less senior employee does not disqualify her from receiving benefits for refusing work. See also 871 IAC 24.22(e).
Benefits shall be allowed effective July 21, 2006.

DECISION:

The decision of the representative dated August 25 2006, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits effective July 21, 2006, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw