

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC ENGELS
Claimant

APPEAL NO: 09A-UI-18758-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SJM CONSTRUCTION INC
Employer

OC: 09/27/09
Claimant: Appellant (4)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Eric Engels (claimant) appealed a representative's December 7, 2009 decision (reference 01) that concluded he (claimant) was qualified to receive unemployment insurance benefits after a separation from employment with SJM Construction, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2010. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on December 28, 2009. The employer indicated that Steve Mall would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Mall was not available; therefore, the employer did not participate in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 1, 2005. He worked full time as a carpenter in the employer's residential and commercial construction business. His last day of work was September 25, 2009.

On September 25 the employer told the claimant and the other crew members that they were laid off due to lack of work and income, but that the employer hoped to recall them soon. On October 30 the claimant spoke with the employer on general social issues, but there was still no work available. On November 27 the claimant stopped into the employer's office and again had a social conversation. The employer indicated that there might be some work coming up within the next week, so that the claimant should contact the field supervisor to inquire. The claimant did not. On or about that date the claimant determined that he would not pursue returning to the

employer as he was going to try to start working in a business for himself. He started his efforts to become self-employed on or about November 30.

The claimant had established an unemployment insurance benefit year effective September 27, 2009. The last week for which he has received unemployment insurance benefits is the week ending November 28, 2009.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

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 separation between the claimant and the employer occurred on September 25, 2009 and was a layoff by the employer due to the lack of work and income; the employer had no work it could provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

While the employer might have intended to recall the claimant during the week ending December 5, 2009, it did not in fact recall the claimant by making a personal contact offering specific work and a definite refusal was made by the claimant. 871 IAC 24.24(8). The fact that the claimant did not make contact with the field supervisor was neither a refusal of work nor a quitting of the employment, as the separation had already occurred.

However, with respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A person who has determined to devote his time and efforts to becoming self-employed rather than to seek employment elsewhere is no longer able and available for work or eligible for unemployment insurance benefits. 871 IAC 24.23(7). As of the week ending December 5, 2009 benefits are denied until or unless the claimant's availability status changes.

DECISION:

The representative's December 7, 2009 decision (reference 01) is modified in favor of the claimant. The claimant was laid off from the employer as of September 25, 2009 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. However, as of the week ending December 5, 2009, the claimant is not able to work and available for work and is therefore not qualified to receive further unemployment insurance benefits until or unless that status changes.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs