

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**EMMA J CUNDIFF**  
Claimant

**YMCA OF OMAHA/COUNCIL BLUFFS**  
Employer

**APPEAL NO. 20A-UI-04014-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (4)**

Iowa Code Section 96.19(38)(c) – Temporary Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 5, 2020, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 20, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on June 1, 2020. Claimant, Emma Cundiff participated. The employer did not register a telephone number for the appeal hearing and did not participate. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

**ISSUE:**

Whether the claimant was discharged for misconduct, voluntarily quit for good cause attributable to the employer, or was laid off.

Whether the claimant was temporarily laid off in connection with the Covid-19 pandemic.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Emma Cundiff is employed by YMCA of Omaha/Council Bluffs as a part-time Assistant Teacher at Charles E. Lakin Early Learning Center on Harmony Street in Council Bluffs. Ms. Cundiff began her employment in 2017 when the Council Bluffs YMCA was located at a different facility in Council Bluffs. When that facility closed and moved operations to the present location on Harmony Street, Ms. Cundiff commenced working from the Harmony Street location. Ms. Cundiff's daily commute to work from home in Council Bluffs to the workplace in Council Bluffs usually takes about five minutes.

On or about March 22, 2020, Joyce Clements, Director for the Charles. E. Lakin Early Learning Center, notified Ms. Cundiff and other center staff that the center was temporarily closing in connection with the Covid-19 pandemic and that they were being furloughed. The hope at that time of the layoff was that employees would be recalled to the employment within a month. The employer has early learning centers located in Omaha. They made Ms. Cundiff aware of work available at its Burgan and Immanuel locations in Omaha, but did not indicate that Ms. Cundiff was required to go work at one of those locations. Mr. Cundiff estimates that both Omaha

locations were a 20 to 30-minute drive from her home. Ms. Cundiff had never worked at any of the employer's centers other than the Lakin facility and was not interested in driving the substantial distance to work at one of the Omaha facilities.

Effective June 1, 2020, the employer recalled Ms. Cundiff to her employment at the Charles E. Lakin Early Learning Center.

Ms. Cundiff established a claim for benefits that was effective March 22, 2020. YMCA of Omaha/Council Bluffs is the sole base period employer in connection with Ms. Cundiff's claim. As of the June 1, 2020 appeal hearing date, Ms. Cundiff had made weekly claims for the nine consecutive weeks between March 22, 2020 and May 23, 2020. Ms. Cundiff received \$1,530.00 in regular state benefits for the nine weeks between March 22, 2020 and May 23, 2020. Ms. Cundiff received \$4,800.00 in Federal Pandemic Unemployment Compensation for the eight weeks between March 29, 2020 and May 23, 2020.

### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Where a claimant's employment is temporarily suspended but not terminated due to a plant shutdown, lack of work or emergency at the claimant's regular job, the claimant is deemed temporarily laid off. See Iowa Code section 96.19(38)(c). On the other hand, if a claimant to whom benefits are paid is in the employ of a base period employer at the time the individual is receiving unemployment insurance benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers. See Iowa Code section 96.7(2)(a).

Iowa Administrative Code rule 871-24.24(15)(g) provides:

Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

g. Distance from the available work.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). A substantial change in the contract of hire may include change in the location of the employment. See Iowa Administrative Code rule 871.24.26(1). The Iowa Courts look at the impact on the claimant, rather than the employer’s motivation. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988).

The evidence in the record establishes that Ms. Cundiff was temporarily laid off from her regular employment from March 22, 2020 through May 31, 2020. During that period, the employer did not make available to Ms. Cundiff the same employment the employer had provided during the base period. Ms. Cundiff was not obligated to pursue or acquiesce in the substantial change in the conditions of the employment that would have been involved in a substantially longer commute to work at one of the employer’s Omaha locations during the period when her Council Bluffs workplace was shut down. Ms. Cundiff is eligible for benefits for the period of March 22, 2020 through May 31, 2020, provided she meets all other eligibility requirements. Under ordinary circumstances, the employer would be subject to charge for the state benefits Ms. Cundiff received for the period beginning March 22, 2020. However, pursuant to the Agency’s public announcement in March 2020 that employer accounts would not be charged for benefits paid in connection with Covid-19 related claims, the employer’s account will not be charged for the benefits paid to Ms. Cundiff for the temporary layoff period of March 22, 2020 through May 31, 2020.

**DECISION:**

The May 5, 2020, reference 01, decision is modified in favor of the employer as follows. The claimant was temporarily laid off, but not permanently separated from the employment, during the period of March 22, 2020 through May 31, 2020. The claimant is eligible for benefits for the period of March 22, 2020 through May 31, 2020, provided she meets all other eligibility requirements. Pursuant to the Agency’s public announcement in March 2020 that employer accounts would not be charged for benefits paid in connection with Covid-19 related claims, the employer’s account will not be charged for the benefits paid to Ms. Cundiff for the temporary layoff period of March 22, 2020 through May 31, 2020.



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James E. Timberland  
Administrative Law Judge

June 19, 2020  
Decision Dated and Mailed

jet/sam