

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN W CRIM
Claimant

APPEAL NO. 12A-UI-08505-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 06/03/12
Claimant: Respondent (2R)

871 IAC 24.2(113)a – Short-Term Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from an unemployment insurance decision dated July 5, 2012, reference 02, that held the claimant eligible to receive unemployment insurance benefits finding that the claimant was still employed and on a short-term layoff. After due notice was issued, a telephone hearing was held August 9, 2012. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Kristen Moore, Office Manager.

ISSUE:

At issue is whether the claimant is on a short-term layoff.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Colin Crim began employment with Jacobson Staffing Company on January 29, 2007. Mr. Crim has been assigned to a variety of assignments with Jacobson Staffing Company. The claimant's last assignment was with the Hach's Chemical Company. That assignment came to an end on October 30, 2011 when the assignment ended. Mr. Crim works as a substitute for the U.S. Postal Service. Because the claimant gives priority to his substitute employment with the postal service, the parties agreed that Mr. Crim would contact Jacobson Staffing Company in order to inform them of his availability for temporary assignments. The last contact that Mr. Crim had with Jacobson Staffing Company was in December 2011. At that time Mr. Crim informed Jacobson Staffing Company that he would not be available for assignments with them throughout January of 2012 and that he would contact Jacobson Staffing to let them know when he was available after that date. The employer has had no further contact with Jacobson Staffing Company.

Based upon Mr. Crim's lack of contact with the temporary employment service that is required for him to be assigned to temporary assignment, the employer does not consider Mr. Crim to be on a layoff status but has concluded that the claimant considers his attachment to be with the U.S. Postal Service.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was on a short-term layoff with Jacobson Staffing Company. It does not.

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 evidence in the record establishes that Mr. Crim discontinued contacting Jacobson Staffing Company in December 2011. At that time the claimant indicated that he would not be available for additional assignments with the temporary staffing company for a considerable period of time into the future and that he would contact the company in the future when he was available for work. Jacobson Staffing Company has had no contact from Mr. Crim since December 11, 2011. Based upon his previous statements of preferring to take substitute assignments with the U.S. Postal Service, the employer has reasonably concluded that Mr. Crim considers himself attached to the U.S. Postal Service and prefers to take assignments from the U.S. Postal Service when they are available.

Based upon the additional evidence in the record the administrative law judge concludes that the claimant is not on a temporary layoff from Jacobson Staffing Company and that the claimant has not held himself as being able and available for work with Jacobson Staffing Company since December 2011.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The unemployment insurance decision dated July 5, 2012, reference 02, finding the claimant eligible to receive unemployment insurance benefits effective June 3, 2012 is reversed. The claimant is not on a short-term layoff. The claimant has not been able and available for work with Jacobson Staffing Company since the time that he has reopened his claim for benefits. Unemployment insurance benefits are withheld until the claimant can establish that he is able and available for work under the meaning of the Employment Security Law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css