

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN D STANSBERRY
Claimant

APPEAL NO: 12A-UI-03822-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BECKER ROOFING COMPANY
Employer

**OC: 11/27/11
Claimant: Respondent (5)**

871 IAC 24.1(113)a – Lay-off/Seasonal Work
Section 96.5-2a – Discharge

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 10, 2012, reference 01, that held the claimant was temporarily laid-off for a lack of work, and no benefit disqualification is imposed on December 29, 2011, because he had a good cause for refusing work. A telephone hearing was held on April 30, 2012. The claimant participated. Brenda Newton, Office Manager, and Phil Newton, Manager, participated for the employer.

ISSUES:

The issue is whether the claimant was temporarily laid-off from work.

The issue is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began working for the employer as a full-time roofer on July 14, 2009. He usually worked as long as weather permits into the late fall of each year. The employer put claimant on seasonal lay-off on November 27, 2011 due to the weather.

Due to a break in the weather, the employer tried to contact claimant about some work in December by telephone voice – mail messaging. The only response was a claimant text that he was at Iowa University hospital with an ill brother. When the employer did not receive a response from claimant by December 29, he was replaced and the employer ended the employment.

Claimant did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes claimant was placed on a seasonal lay-off beginning November 27, 2011, and no benefit disqualification is imposed.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge further concludes the employer failed to establish claimant was discharge for misconduct on December 29, 2011.

The employer witness was not the representative who tried to contact claimant about some work in December 2011. While voice-mail messaging is an accepted means of communication, it does not appear claimant was advised that it was to report for some work or he would be replaced. Claimant had been laid-off for the season, and the employer only had some limited work to do that became doable due to a weather break. Job disqualifying misconduct is not established.

DECISION:

The department decision dated April 10, 2012, reference 01, is modified. The claimant's lay-off on November 27, 2011 is for no disqualifiable reason. His discharge on December 29, 2011 is not due to misconduct in connection with employment. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs