

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTA J SMITH
Claimant

APPEAL NO. 09A-UI-08773-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 04/19/09
Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work
871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Barr-Nunn Transportation filed a timely appeal from the representative's decision dated June 18, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone hearing was scheduled for and held on July 6, 2009. The claimant participated personally. Participating as a witness was Kenneth Brooksher, a personal friend. The employer participated by Ms. Windy Noring, Workmen's Compensation Coordinator/Human Resource Department.

ISSUE:

At issue in this matter is whether the claimant is able and available for work and entitled to benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: Ms. Smith is an over-the-road tractor trailer driver for Barr-Nunn Transportation. Ms. Smith began her employment in October 2006. She is employed full time and is paid by the mile. The claimant's immediate supervisor is her dispatcher (Monty).

The claimant filed a claim for unemployment insurance benefits effective April 19, 2009 after delivering a load to Louisville, Kentucky, on April 17, 2009 being instructed by her dispatcher to return home. The claimant followed the dispatcher's instructions and called the employer each day for a one-week period attempting to secure additional loads. Although the claimant was able and available for work and ready to perform service of the company, no loads were available. Subsequently the claimant was dispatched a load and then once again sent home for a number of days as there was no work. The claimant continues to be employed by Barr-Nunn Transportation at the time of hearing.

It is the employer's position that it would be unusual for a dispatcher to "send a driver home." It is the employer's position that usually drivers request to go home and if they do so they increase their chances for not securing a load because other drivers might be in closer proximity to available loads.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is able and available for work and was temporarily laid off work.

The evidence in the record establishes that the claimant did not request to be sent home on or about April 17, 2009 but that the claimant was instructed to return home by her dispatcher because the company had no loads. The evidence in the record establishes that the claimant was able and available for work and contacted the employer each day in an attempt to secure additional driving loads from the company. The claimant at all times was able and available for work and kept in daily contact with the company.

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.

For the reasons stated herein the administrative law judge concludes the claimant is able and available for work and eligible to receive unemployment insurance benefits providing that she meets other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 18, 2009, reference 01, is affirmed. The claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed