

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**THRESA L HARRIS**  
Claimant

**APPEAL 16A-UI-11176-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OTTO VENDING SERVICE INC**  
Employer

**OC: 01/03/16**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated October 4, 2016, (reference 10) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 31, 2016. Claimant participated. Employer participated by Michael Otto, President.

**ISSUE:**

The issue in this matter is whether the claimant was laid off due to a lack of work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on or about September 12, 2016. Claimant was laid off from work on or about September 19, 2016 because employer no longer needed her services.

The claimant along with two other co-workers worked for employer preparing food products that were sold by employer. Employer changed the typed of products it was selling, and claimant's services were no longer required. She was told she had been laid off by the employer's son, Cody Otto on or about September 19, 2016. The layoff was indefinite, and claimant reasonably believed she had been permanently separated from the employment at that time. Claimant began looking for other work, and she later filed for unemployment benefits after she was unable to find suitable work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(2)c provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(27) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

Claimant was told by employer that she was laid off because there was no work available to her. She was not given a date where she would be allowed to return to work, and she reasonably believed that the layoff was permanent. Benefits are allowed.

**DECISION:**

The October 4, 2016, (reference 10) unemployment insurance decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/rvs