

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PETER J STUBER

Claimant

APPEAL 20R-UI-11846-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA FENCING LTD

Employer

OC: 11/10/19

Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.1(113)a – Separations From Employment
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Central Iowa Fencing (employer) appealed a representative's June 29, 2020, decision (reference 03) that concluded Peter Stuber (claimant) was eligible to receive unemployment insurance benefits. Administrative Law Judge Golden issued a decision on August 17, 2020, reversing the representative's decision. The Employment Appeal Board issued a decision of remand on September 23, 2020.

After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 18, 2020. The claimant participated personally. The employer participated by Mark Dunahoo, Owner. The parties waived notice and the issue of whether the claimant was able and available for work was adjudicated. The administrative law judge took official notice of the administrative file.

ISSUES:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 10, 2020, as a full-time shop manager. He signed for receipt of the employer's handbook on February 17, 2020. The employer never scheduled the claimant for more than twenty-seven hours of work per week.

On or about March 9, 2020, the employer offered employees voluntary layoff due to the Covid-19 pandemic and not having sufficient hours to offer employees. It told employees to apply for unemployment insurance benefits. Due to an underlying health condition, the claimant told his supervisor he would take the layoff. The supervisor said the claimant would be called back to

work when hours increased. The claimant was ready, willing, and able to return to work if the employer called.

The employer never called the claimant back to work. All other employees were called back in two to three weeks. The office manager indicated at the fact-finding interview that the claimant's "normal work" was not available. The

On or about August 17, 2020, the claimant started a new job at Precision Underground Utilities in Cambridge, Iowa.

The claimant filed for unemployment insurance benefits with an effective date of November 10, 2019. His weekly benefit amount was determined to be \$481.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after November 10, 2019. The employer participated personally at the fact finding interview by Sara Nicklin, Office Manager.

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 section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 Admin. Code r. 871-24.1(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 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 employer laid the claimant off for lack of work as of February 13, 2020. When an employer suspends a claimant from work status, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

The next issue is whether the claimant is able and available for work.

Iowa Code section 96.4(3) provides:

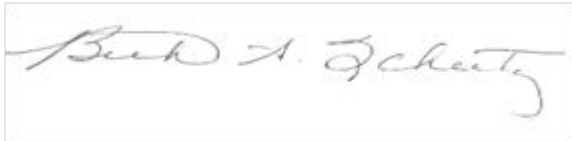
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

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".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There has been no evidence offered that the claimant is not able and available for work after his separation from employment.

DECISION:

The representative's June 29, 2020, decision (reference 03) is affirmed. The claimant was laid off due to a lack of work. He is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Beth A. Scheetz".

Beth A. Scheetz
Administrative Law Judge

November 24, 2020
Decision Dated and Mailed

bas/scn