

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA J WALSH

Claimant

APPEAL 16A-UI-09512-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC - DUBUQUE WORKS

Employer

OC: 07/24/16

Claimant: Appellant (4)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 19, 2016, (reference 02) unemployment insurance decision that denied benefits as of August 7, 2016. After due notice was issued, a hearing was held by telephone conference call on September 19, 2016. Claimant participated. Employer participated through labor relations employee Ryan Moode. The parties waived proper notice for Iowa Code sections 96.5(2)(a) and 96.5(1) and the issue of whether claimant was temporarily laid off due to a lack of work. Official notice was taken of the administrative record of claimant's benefit payment records, with no objection.

ISSUES:

Was the claimant temporarily laid off due to a lack of work?

Is the claimant able to and available for work?

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision was mailed to claimant's address of record on August 19, 2016. Claimant did not receive the decision. The first notice of disqualification was when claimant tried to file her claim for the week ending August 20, 2016 and was notified it was locked. Claimant was not notified she had to file an appeal by August 29, 2016.

Claimant is employed as an assembler, full-time, since March 24, 2016. Claimant filed a claim for benefits with an effective date of July 24, 2016. Claimant was on vacation for the weeks ending July 30, 2016 and August 6, 2016. Claimant reported her vacation pay for the weeks ending July 30, 2016 and August 6, 2016. Claimant worked the week ending August 13, 2016 and reported her wages for the week.

Claimant was on a temporary layoff, due to a lack of work, for the week ending August 20, 2016. Claimant did not use vacation pay for the week ending August 20, 2016. Claimant filed a claim for benefits for the week ending August 20, 2016.

Claimant went back to work on August 22, 2016. Claimant filed a claim for benefits for the week ending August 27, 2016.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was on a temporary layoff or able and available for work. For the reasons that follow, the administrative law judge concludes claimant was temporarily laid off due to a lack of work for the week ending August 20, 2016 and eligible for benefits for the week ending August 20, 2016, but she is not eligible for benefits for the period August 7, 2016 to August 13, 2016.

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) 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.

Iowa Admin. Code r. 871-24.22(2)j(1), (2) 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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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 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 (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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant filed her claim for benefits effective July 24, 2016. Claimant filed her continuous claim for benefits for the three weeks prior to her temporary layoff (the weeks ending July 30, 2016, August 6, 2016, and August 13, 2016), but she was not on layoff during those three weeks and is not considered available for work during this period. Claimant did report the income she received for the weeks ending July 30, 2016, August 6, 2016, and August 13, 2016. Claimant is not eligible for benefits from period August 7, 2016 to August 13, 2016.

Claimant was on temporarily layoff from the employer for the week ending August 20, 2016 due to a lack of work. Because the temporary separation for the week ending August 20, 2016, was attributable to a lack of work by the employer, benefits are allowed for the week ending August 20, 2016.

DECISION:

The August 19, 2016, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant's appeal is timely. Claimant was temporarily laid off due to a lack of work for the week ending August 20, 2016. Benefits are allowed for the week ending August 20, 2016, provided the claimant is otherwise eligible. Benefits are not allowed for the period August 7, 2016 to August 13, 2016.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs