

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TAMARA L HATCHER**  
Claimant

**MARSDEN BLDG MAINTENANCE LLC**  
Employer

**APPEAL 17A-UI-11076-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/24/17**  
**Claimant: Respondent (1)**

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 20, 2017, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 16, 2017. Claimant participated. Employer participated by Tanis Burrell, Hearing Representative.

**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 August 31, 2017.

The claimant began working for employer on April 5, 2016 as a general cleaner. Claimant informed employer at the time she was hired that she did not have a car, and that she would be taking the bus or riding her bike to work each day. Claimant was assigned to work cleaning a building in Council Bluffs, Iowa which was in the same city where she lived.

On or about August 25, 2017, claimant was notified that the employer was losing its cleaning contract with the business where she had been working since April 5, 2016. Employer told claimant it would try to find her another location to work as soon as it could. On or about September 21, 2017, employer told claimant that she could work cleaning a building over in Omaha, Nebraska. Claimant reminded employer that she did not have a car, and that she took the bus to work most days. Claimant explained that she still wanted to work for employer, but the work would need to be nearer to where she lived, and not during hours when city buses did not run. The employer was not able to provide work nearer to where the claimant lived at that time.

## 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 provides:

**Definitions.** Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *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.

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".

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

**Benefit 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 laid off by the employer after it lost a cleaning contract with the business where claimant had been cleaning. Claimant wanted to continue working for employer, but it did not have suitable full-time work for claimant.

Because of being permanently laid off from work, claimant is obligated to make at least two in-person work searches during each week benefits are claimed and may not restrict herself to temporary or intermittent employment.

#### **DECISION:**

The October 20, 2017, (reference 01) 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/scn