

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R SHELDON
Claimant

APPEAL NO. 10A-UI-07395-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOX RIVER MILLS INC
Employer

OC: 04/18/10
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving – Layoff Due to Lack of Work
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 17, 2010, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 8, 2010. Claimant participated. Employer participated through Sarah Christiansen.

ISSUE:

The issue is whether claimant was laid off due to a lack of work and if is able to and available for work effective April 18, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: He generally worked 40 hours per week as a knitter. His last day of work was on March 4, 2010 and was on Family Medical Leave Act (FMLA) leave but did not return to work on April 18, 2010 because the employer did not have work for him and has not called him back to work since then. He is searching for other full-time 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.

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.

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".

Since employer was not able to provide work to claimant upon his release from FMLA leave. Therefore, the separation was attributable to a lack of work by the employer. Since he is available to return to work on April 18, 2010 and has been looking for other full-time employment since then, he is able to and available for work. Benefits are allowed.

DECISION:

The May 17, 2010 (reference 01) decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css