

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN L WERTH**  
Claimant

**BEST WESTERN  
LONGBRANCH MOTOR INN**  
Employer

**APPEAL NO: 09A-UI-10413-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/28/09  
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available/Still Employed  
871 IAC 24.1(113)a – Layoff

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 17, 2009, reference 01, that held the claimant was laid off from work on June 12, 2008, and benefits are allowed. A telephone hearing was held on August 6, 2009. The claimant participated. Douglas DeLong, CFO, participated for the employer.

**ISSUE:**

Whether the claimant is still employed by the employer.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant last worked for the employer as a full-time cook at Cooper's Mill restaurant located in downtown Cedar Rapids, Iowa on June 12, 2008. The claimant and other employees were laid off from work due to the flooding and closing of the employer's restaurant on June 12. The employer did not protest that the claimant was laid off due to the temporary business closing, and it stated his was still employed pending re-opening of the restaurant

When the claimant filed his claim effective June 8, 2008, the department labeled it group code 8 to reflect the loss of employment due to the natural disaster. The employer was non-charged for benefits paid to the claimant through the end of Thanksgiving week (November 2008), and when the claimant began receiving EUC (emergency unemployment) benefits for the period from the week ending November 15, 2008 thru February 7, 2009.

The claimant filed a new claim effective June 28, 2009, as he remains unemployed, and has not been recalled to work by the employer. The employer protested the claimant as still employed with a view to recalling him to work in a month or so. The employer does not contest the claimant's eligibility for benefits, but it is requesting a non-charge to its account.

## REASONING AND CONCLUSIONS OF LAW:

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".

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.

The administrative law judge concludes the claimant was laid off for lack of work on June 12, 2008, and benefits are allowed. While the employer's account is relieved for benefit charges on the 2008 claim, it is not on the 2009 claim.

Since a layoff is a separation from employment for no disqualifiable reason, the claimant is allowed benefits. The claimant is able and available for work, and remains attached to the employer subject to a recall to work. While the employer's account is non-charged for the claimant's 2008 claim due to the flood disaster and EUC benefits, those circumstances are not present in the 2009, current claim, and the employer's account is charged.

**DECISION:**

The department decision dated July 17, 2009, reference 01, is affirmed. The claimant was laid off for lack of work on June 12, 2009. Benefits are allowed. provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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