

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONIO ROBLES

Claimant

APPEAL NO. 13A-UI-14078-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY

Employer

OC: 11/24/13

Claimant: Respondent (1)

871 IAC 24.1(113)a – Other Separations

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated December 16, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 23, 2014. The claimant participated personally. The employer participated by Aureliano Diaz, Interim Human Resources Manager, and Lori Kriegel, Worker's Compensation. The record consists of the testimony of Lori Kriegel; the testimony of Antonio Robles; and the testimony of Aureliano Diaz. Ike Rocha served as Spanish interpreter for the claimant.

ISSUE:

Whether the claimant was separated from his employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a pork processor. The claimant worked at the employer's plant located in Marshalltown, Iowa. The claimant's date of hire was February 24, 1993. He was a full-time production worker. He is still considered an employee.

The claimant had a work-related injury on October 10, 2012. The claimant was released to return to work on September 6, 2013, with a 30-pound lifting restriction. The claimant checked with personnel and with the union about returning to work. He did check out a job that would meet his restrictions but the job was given to someone else. The claimant is willing to return to work but no work has been made available for him.

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REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The claimant is eligible for unemployment insurance benefits. The greater weight of the evidence in this case is that the claimant has been released to return to work from a work-related injury. The claimant has a 30-pound lifting restriction due to an injury to his hand. The claimant has asked to return to work but the employer has not returned him to work. The claimant is still considered an employee and therefore the claimant has, in effect, been laid off by the employer until a job is found for him that meets his restrictions. Under these

circumstances, the claimant has been separated from his employment for non-disqualifying reasons. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 16, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css