

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SILVANO J ESPITIA

Claimant

APPEAL NO. 17A-UI-01018-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE

Employer

OC: 12/25/16

Claimant: Respondent (4/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(c) – Temporary Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 19, 2017, reference 01, decision that allowed benefits to claimant Silvano Espitia effective December 25, 2016, provided he met all other eligibility requirements, based on the claims deputy's conclusion that Mr. Espitia was able and available for work, but temporarily laid off. After due notice was issued, a hearing was held on February 17, 2017. Mr. Espitia participated. Jim Funcheon, Division Human Resources Manager, represented the employer. Exhibits 1 through 5 were received into evidence.

ISSUE:

Whether Mr. Espitia was able to work and available for work within the meaning of the law during the benefit week that ended December 31, 2016.

Whether Mr. Espitia was temporarily laid off during the benefit week that ended December 31, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Silvano Espitia is employed by Bridgestone Americas Tire as a full-time fork-lift driver. His work hours are 10:00 p.m. to 6:00 a.m. His work week begins on Sunday evening and ends on Friday morning. During the week of December 25-31, 2016, the employer's plant was shut down. Mr. Espitia remained available to perform work for the employer that week, but the employer had no work for Mr. Espitia during that week. The employer recalled Mr. Espitia to the full-time employment on Tuesday, January 3, 2017.

Mr. Espitia established an original claim for benefits that was effective December 25, 2016. Mr. Espitia made a weekly claim for the week of December 25-31, 2016. Mr. Espitia then discontinued his claim for benefits because he had returned to work.

REASONING AND CONCLUSIONS OF LAW:

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 Administrative Code rule 871-24.1(113)(a) defines layoff as follows:

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 96.19(38)(c) defines temporary unemployment, as follows:

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

The evidence in the record establishes that Mr. Espitia was able to work, available for work, but temporarily laid off during the week of December 25-31, 2016, while the employer shut down production. Mr. Espitia is eligible for benefits for the week of December 25-31, 2016, provided he is otherwise eligible. The employer's account may be charged for benefits for that week.

While the employer appealed a decision that addressed Mr. Espitia's availability for work and whether he was laid off, the employer actually wanted to address whether Mr. Espitia had received vacation pay and/or holiday pay that is deductible from the unemployment insurance benefits that he received for the week that ended December 31, 2016. The employer provided appropriate information at the time of protest, but the vacation pay and holiday pay issues were not addressed by the Benefits Bureau. Mr. Espitia declined to waive formal notice on those issues so that the administrative law judge could address those issues as part of the appeal hearing. Accordingly, this matter will be remanded to the Benefits Bureau for adjudication of the vacation pay and holiday pay issues.

DECISION:

The January 19, 2017, reference 01, decision is modified as follows. During the week that ended December 31, 2016, the claimant was able to work, available for work, but temporarily laid off. The claimant was eligible for the benefits he received for that week, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant for that week.

This matter is remanded to the Benefits Bureau for determination of whether the claimant received vacation pay and/or holiday pay that is deductible from the unemployment insurance benefits that he received for the week that ended December 31, 2016.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs