

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on February 14, 2005, as a part-time telephone sales representative. The claimant was laid off for lack of work after he worked on August 2, 2005. He understood he should return to work on August 15, 2005. The claimant never appeared for work again. Continued work was available to the claimant from August 15, 2005, had he not resigned.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was laid off for lack of work. For the following reasons, the administrative law judge concludes he was.

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 employer laid the claimant off for lack of work from August 3 through August 14, 2005. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant is eligible to receive unemployment insurance benefits for that period.

The next issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons, the administrative law judge concludes he did.

Iowa Code section 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant's intention to voluntarily leave work was evidenced by his actions. He did not return to work. There was no evidence presented at the hearing of good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

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".

There was no testimony offered which indicated the claimant was not able and available for work. The claimant was able and available for work.

DECISION:

The representative's September 8, 2005 decision (reference 02) is modified in favor of the appellant. The claimant was able and available for work. He is eligible to receive unemployment insurance benefits from August 3 to 14, 2005, due to lay off from work. On August 15, 2005, the claimant voluntarily left work without good cause attributable to the employer.

bas/kjw