

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M BRIDGES
Claimant

APPEAL NO. 10A-UI-16686-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AN EVENING IN
Employer

OC: 05/23/10

Claimant: Respondent (1/R)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

An Evening In (employer) appealed a representative's December 6, 2010 decision (reference 03) that concluded Dawn M. Bridges (claimant) was qualified to receive unemployment insurance benefits after a May 2010 separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2010. The claimant participated in the hearing. Marcella Porterfield appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a brief period of working with the employer on an independent contractor basis, the claimant started working for the employer as an employee on September 4, 2009. She worked part-time (15 – 18 hours per week) as a cashier in the employer's retail/floral/rental business, usually working at least on Mondays and Fridays. Her last day of work was May 28, 2010. The employer had advised her about a week prior that May 28 would be her last day of work for at least the foreseeable future, as there was insufficient work to keep the claimant working at least through June, and the business was going to be closing.

Some evidence was provided suggesting that there may have been a recall to work by the employer to the claimant on or about July 6, and that the claimant might not have accepted a recall to work. There has not as yet been a representative's determination as to whether there was a bona fide recall to work that was suitable and whether there as a refusal of that work or, if so, whether there was good cause for refusing a recall to work.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

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 separation between the claimant and the employer was a layoff by the employer effective May 28 2010 due to the lack of work; the employer had no work available it could provide to the claimant at that time. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

An issue as to whether, after the separation by layoff, the employer might have recalled the claimant for suitable work and whether the claimant refused that work, with or without good cause, arose during the hearing. While this appears to be the true dispute between the parties, there has not been a preliminary determination on that issue, and the issue was not included in the notice of hearing for this case. The case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5). The parties are advised to review the provisions of rule 871 IAC 24.24 regarding offers of work/recalls to work and refusals.

DECISION:

The representative's December 6, 2010 decision (reference 03) is affirmed. The claimant was laid off from the employer as of May 28, 2010, due to a lack of work. Benefits are allowed as of that time, provided the claimant is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the July recall/refusal issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw