

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN MAY
Claimant

APPEAL NO: 15A-UI-10489-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VANOSDEL PLASTERING & DRYWALL INC
Employer

OC: 03/22/15
Claimant: Appellant (2)

Section 96 5-1 – Voluntary Leaving – Layoff
Section 96.4-3 – Able and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 4, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 1, 2015. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on September 4, 2015. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 14, 2015. The appeal was not filed until September 18, 2015, which is after the date noticed on the disqualification decision. The claimant also had a backdating issue that was scheduled for an appeal hearing September 17, 2015. He believed that the backdating issue would be included in the September 17, 2015, hearing and decision until notified by the administrative law judge in that hearing that it would not be considered during that hearing. He then filed his appeal on this issue the following day, September 18, 2015. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired as a full-time laborer for Vanosdel Plastering & Drywall March 2002. He was on a short-term layoff beginning the week of August 9, 2015, and running through the week ending August 29, 2015. The claimant was in the hospital one day during the layoff. That occurred during the week ending August 15, 2015. He returned to work when recalled effective August 31, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 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.

The claimant was laid off for the three weeks ending August 29, 2015, due to the employer finishing one job and waiting for the next job to start. While he was in the hospital August 13, 2015, he was able and available for work the majority of the week. Therefore, claimant was able and available for work during the layoff and the separation was attributable to a lack of work by the employer. Consequently, benefits are allowed.

DECISION:

The September 4, 2015, reference 02, decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work and was able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css