IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CORY M GREGERSEN
Claimant

MURPHY HEAVY CONTRACTING CORP
Employer

APPEAL NO: 13A-UI-04647-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/16/12
Claimant: Respondent (5/R)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Murphy Heavy Contracting Corporation (employer) appealed a representative's April 15, 2013 decision (reference 02) that concluded Cory M. Gregersen (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2013. The claimant received the hearing notice and responded by calling the Appeals Section on May 2, 2013. He indicated that he would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, he did not participate in the hearing. Duane Murphy appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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:

The claimant started working for the employer on August 29, 2012. He worked full time as a laborer in the employer's bridge construction business. His normal work schedule was to work Monday through Friday from 7:30 a.m. until 5:00 p.m., with occasional Saturday work. His last day of work was November 27, 2012. Effective November 28 the claimant went on medical leave of absence due to a personal medical issue. He was released from care effective on or about December 17 and returned to the employer. However, at that time the employer advised the claimant that he was now laid off for the winter season. Approximately six other employees were laid off at about this same time.

On March 29, 2013 the employer's president, Murphy, spoke to the claimant and informed him that he was being recalled for work, and was to report back for work on Monday, April 1. The claimant responded that at that time he was unable to work full time, but could only work about three days per week. Murphy replied that he needed a full-time employee. On April 1 the

claimant further responded and indicated that he could work four days a week, but could still not work full time. Murphy again replied that this would not be acceptable, that he needed a full-time employee. As a result, the claimant did not return to work with the employer.

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 actual separation of employment between the claimant and the employer did not occur in April 2013, but on December 17, 2012; it was a layoff by the employer due to the lack of work for the season. What happened on April 1, 2013 was not a new separation, but was an attempted recall to work, and a potential refusal of that recall for work. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

The true issue as to whether the claimant refused a suitable offer of recall to work does yet need to be addressed. However, there has been no Claims determination on that question, and the issue was not included in the notice of hearing for this case. Tied into the question as to whether there was a refusal of work is whether the claimant was able and available for work. Rule 871 IAC 24.24(4) provides in pertinent part:

> Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work . . . If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested.

Also, a claimant must remain available for work on the same basis as when his base period wages were accrued. 871 IAC 24.22(2)f. The case will be remanded to the Claims Section for an investigation and preliminary determination on these issues. 871 IAC 26.14(5).

DECISION:

The representative's April 15, 2013 decision (reference 02) is modified with no effect on the parties. The claimant was laid off from the employer as of December 17, 2012 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The matter is **REMANDED** to the Claims Section for investigation and determination of the refusal and able and available issue.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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