

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEF C SCHLEISMAN
Claimant

NITE OWL STAFFING INC
Employer

APPEAL NO: 11A-UI-07070-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/03/11
Claimant: Respondent (5)**

871 IAC 24.1(113)a – Lay-off/Temporary Employment

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 16, 2011, reference 02, that held the claimant completed a temporary assignment on April 4, 2011, and benefits are allowed. A telephone hearing was held on June 21, 2011. The claimant participated. Christine Denning, CFO, participated for the employer.

ISSUE:

Whether claimant completed his temporary job assignment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant began working various assignments for the employer on September 11, 2009. After an 11-month absence from January 29, 2010 to September 3, he resumed work.

Claimant accepted a temporary assignment at Wellmark as a food preparer beginning February 14, 2011. On April 4, a Wellmark representative called the employer requesting claimant not to return due to complaints about rude conduct. The employer did not terminate claimant's employment. Claimant was offered and accepted a new employer assignment that he started on April 19, and he continues to perform work for it.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge further concludes the claimant was laid-off for lack of work on April 4, 2011.

The employer client (Wellmark) does not have authority to terminate claimant's employment, but it has the right to request he not perform further work. The employer did not discharge claimant, but it complied with the client request. By offering further work to claimant after a two-week time lapse that period is commensurate to a lay-off.

DECISION:

The department decision dated May 16, 2011, reference 02, is modified with no effect. The claimant was laid-off for lack of work on April 4, 2011. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs