

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEFANIE D HAMILTON
Claimant

APPEAL NO. 11A-UI-11665-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

OC: 07/17/11
Claimant: Respondent (1-R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(1) – Voluntary Leaving – Layoff Due to Lack of Work

STATEMENT OF THE CASE:

The employer filed an appeal from the August 30, 2011 (reference 03) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 28, 2011. Claimant responded to the hearing notice instructions but was not available when the hearing was called, did not respond to the voice mail message by the time the hearing record was closed, and did not participate. Employer participated through Coralville Center Manager Lynn Bunnell.

ISSUE:

The issue is whether claimant is able to and available for work effective July 17, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a telephone sales representative from June 28, 2010 and was separated from employment on August 23, 2011. Her last day of work was August 17, 2011. She was laid off due to a lack of work from July 1 through 22, 2011. She returned to work and had the same number of hours before and after the layoff period. She claimed and was paid benefits for the one week ending July 23, 2011. There are no other claims. The separation has not been addressed at the claims/fact-finding level.

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.

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.

Since the claimant was on a temporary layoff for the week ending July 23, 2011 she was qualified for benefits.

Iowa Code § 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".

871 IAC 24.22(2)c provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Because she was laid off for fewer than four weeks she was considered temporarily laid off and was not required to search for work.

DECISION:

The August 30, 2011 (reference 03) decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed through the week ending July 23, 2011.

REMAND: The separation issue delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css