

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R KELSO
Claimant

APPEAL NO. 11A-UI-02754-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

OC: 01/16/11
Claimant: Respondent (4-R)

871 IAC 24.1(113) – Layoff
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 25, 2011, reference 01, decision that allowed benefits effective January 16, 2011 based on an Agency conclusion that the claimant was temporarily laid off, but available for work. After due notice was issued, a hearing was held on March 29, 2011. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jennifer Grandgenett represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether the claimant has been on a temporary layoff since he established his claim for benefits.

Whether the claimant was on an approved leave of absence at any point since he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Timothy Kelso has been employed by Pella Corporation since August 31, 2009 and continued to be attached to the employment, but temporarily laid off. Mr. Kelso last performed work for the employer on January 27, 2011. The lay-off was not in effect until the end of the shift on February 7, 2011. In anticipation of the layoff, Mr. Kelso requested and was approved for a leave of absence for the period of January 27 through February 7, 2011. But the employer continued to have work for Mr. Kelso during the leave period leading up to the layoff.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113)(a) provides as follows:

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status 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 labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Administrative Rule 871 IAC 24.23(10) provides as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Code section 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) 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.

The evidence in the record establishes that Mr. Kelso performed full-time work until January 27, 2011. Mr. Kelso was not available under the applicable definition while he continued to work.

Mr. Kelso was on an approved leave of absence from Thursday, January 27, 2011 through Monday, February 7, 2011. The beginning of the leave of absence fell during the week that ended January 29, 2011. It continued through the benefit week that ended February 5, 2011. Mr. Kelso was not eligible for benefits during the period of the leave of absence. Mr. Kelso was not eligible for benefits for the three-week period of January 16 through February 5, 2011.

Mr. Kelso was job attached but temporarily laid off effective February 7, 2011. Effective the benefit week that ended February 12, 2011, Mr. Kelso was eligible for benefits, provided he was otherwise eligible.

This matter will be remanded to the Claims Division for entry of an overpayment decision regarding the benefits disbursed to the claimant for the period of January 16, 2011 through February 5, 2011.

DECISION:

The Agency representative's February 25, 2011, reference 01, is modified as follows. The claimant was either working or on an approved leave of absence between January 16, 2011 and the benefit week that ended February 5, 2011, did not meet the availability requirements during that period, and was not eligible for benefits. The claimant was job attached but temporarily laid off effective February 7, 2011. Effective the benefit week that ended February 12, 2011, the claimant was eligible for benefits, provided he was otherwise eligible.

This matter is remanded to the Claims Division for entry of an overpayment decision regarding the benefits disbursed to the claimant for the period of January 16, 2011 through February 5, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css