

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELSA S ALSINA DE KROHN
Claimant

APPEAL NO. 08A-UI-03142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEGLER, KEGLER & AREND PC
Employer

OC: 12/09/07 R: 03
Claimant: Appellant (2)

Iowa Code section 96.4(3) – Able & Available
871 IAC 24.1(113) – Layoff
Iowa Code section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

Elsa Alsina De Krohn filed a timely appeal from the March 25, 2008, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on April 15, 2008. Ms. Alsina De Krohn participated. Vicky Kegler, Office Manager, represented the employer. At the start of the hearing, the parties waived formal notice on issues relating to the separation from employment and those issues were added to the hearing.

ISSUES:

Whether the claimant has been able to work and available for work since February 17, 2008.

Whether the claimant separated from her employment with Kegler, Kegler & Arend, P.C., for a reason that would disqualify her for unemployment insurance benefits.

Whether the employer's account may be charged for benefits paid to Ms. Alsina De Krohn.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Elsa Alsina De Krohn established a claim for benefits that was effective December 9, 2007. The claim for benefits was prompted by Ms. Alsina De Krohn's layoff from full-time employment with Dental Touch Associates, P.C. in November 2007. The Claims Division deemed Ms. Alsina De Krohn eligible for unemployment insurance benefits and deemed the layoff temporary. Because the Agency deemed the layoff temporary and deemed Ms. Alsina De Krohn job attached, the Agency waived the work search requirement. Ms. Alsina De Krohn was instructed to report her wages on a weekly basis.

Ms. Alsina De Krohn is a dental hygienist. While Ms. Alsina De Krohn looks for new full-time employment, she has accepted employment on a part-time, temporary basis in multiple dental offices. Ms. Alsina De Krohn has reported her wages to Workforce Development on a weekly basis and the Agency has determined her weekly benefit eligibility accordingly.

On January 14, 2008, Ms. Alsina De Krohn commenced her part-time, temporary employment with Kegler, Kegler & Arend, P.C. Dr. Daniel Kegler, D.D.S., had hired Ms. Alsina De Krohn to fill in for an employee who was on a medical leave of absence.

Once Ms. Alsina De Krohn commenced her work with Kegler, Kegler & Arend, P.C., the weekly wages she reported to Workforce Development began to exceed her weekly unemployment insurance benefit amount of \$373.00. For the period of January 13, 2008 through the week that ended February 16, Ms. Alsina De Krohn's weekly wages significantly exceeded her weekly benefit amount and, therefore, Ms. Alsina De Krohn's weekly benefit eligibility was reduced to zero during those weeks.

Ms. Alsina De Krohn may not have understood why her weekly benefits had disappeared. In addition, Ms. Alsina De Krohn may have received erroneous advice from a Workforce Development representative regarding what she needed to do to begin receiving benefits again. Ms. Alsina De Krohn "refiled" her claim, effective February 17, 2008. At the time Ms. Alsina De Krohn "refiled" her claim, she was still employed by Kegler, Kegler & Arend, P.C., on a part-time temporary basis. Workforce Development mailed a notice of claim to Kegler, Kegler & Arend, P.C. The employer protested the claim and asserted that Ms. Alsina was still employed on the same part-time, temporary basis upon which she had been hired. A claims representative entered a decision denying benefits effective February 17, 2008 and based that decision on the fact that Ms. Alsina De Krohn was still employed by Kegler, Kegler & Arend, P.C., under the same conditions that existed at the time of her January 14, 2008 hire. The Workforce Development representative does not appear to have considered that Ms. Alsina De Krohn's original claim for benefits had been based on a prior layoff from full-time employment with another employer and that Ms. Alsina De Krohn had not yet obtained new, full-time employment.

Kegler, Kegler & Arend, P.C., ended Ms. Alsina De Krohn's part-time, temporary employment on March 5, 2008. The employer ended the employment because its permanent employee was about to return from a leave of absence and, therefore, the employer no longer needed Ms. Alsina De Krohn's services. Ms. Alsina De Krohn did not voluntarily quit. Nor had the employer discharged Ms. Alsina De Krohn for misconduct.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address the issue of whether Ms. Alsina De Krohn has met the work availability requirements of Iowa Code section 96.4(3) since February 17, 2008.

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.

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence in the record establishes that Ms. Alsina De Krohn's November 2007 layoff from Dental Touch Associates, P.C., may have begun as a temporary layoff, but is now a permanent layoff. Accordingly, Ms. Alsina De Krohn is now subject to the work search requirements of Iowa Code section 96.4(3) and must document and report her job contacts. The evidence indicates that Ms. Alsina De Krohn has been engaged in an active and earnest search for new full-time employment up to this point and that her part-time temporary employments have not unduly restricted her work search or availability. Ms. Alsina De Krohn continues to be eligible for unemployment insurance benefits, provided she is otherwise eligible. Ms. Alsina De Krohn shall continue to report to Iowa Workforce Development any wages she receives from her part-time temporary employments so that these wages may be considered by the Agency in determining Ms. Alsina De Krohn's weekly benefit eligibility.

Because there was a separation from the employment on March 5, 2008, the administrative law judge will address the separation, its impact on Ms. Alsina De Krohn's eligibility for unemployment insurance benefits, and the employer's liability for benefits paid to Ms. Alsina De Krohn.

The weight of the evidence in the record indicates that Ms. Alsina De Krohn's separation from Kegler, Kegler & Arend, P.C., took the form of a layoff when the employer terminated the temporary employment.

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

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.
- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Because the separation from the employment involved neither a voluntary quit nor a discharge for misconduct, the separation from the employment would not in any way disqualify Ms. Alsina De Krohn for unemployment insurance benefits. See Iowa Code section 96.5(1) and 96.5(2)(a). Ms. Alsina is eligible for unemployment insurance benefits, provided she is otherwise eligible.

Because Kegler, Kegler & Arend, P.C., is not a "base period employer," Kegler, Kegler and Arend, P.C., will not be assessed for any unemployment insurance benefits paid to Ms. Alsina De Krohn during the claimant's current benefit year, which started December 9, 2007 and ends on December 6, 2008. See Iowa Code section 96.7(2), regarding liability of base period employers.

Workforce Development rule 871 IAC 24.1(12)(a) defines "base period employer" as "an employer who paid wages for employment to a claimant during the claimant's base period."

Workforce Development rule 871 IAC 24.1(11) defines the "base period" as follows:

The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception.

However, because Ms. Alsina De Krohn separated from the employment on March 5, 2008 for a reason that would not disqualify her for unemployment insurance benefits, the employer's account may be charged for benefits disbursed to Ms. Alsina De Krohn in connection with a claim established on or after December 7, 2008, if the employer is at that time a "base period employer."

DECISION:

The Agency representative's March 25, 2008, reference 04, decision is reversed. The claimant has been able and available for work since February 17, 2008. The employer laid off the claimant on March 5, 2008. The claimant is eligible for benefits, provided she is otherwise eligible. The claimant is no longer subject to a temporary layoff and should be reclassified as a group 6 claimant. The employer is not a base period employer. The employer's account will not be charged for benefits paid during the current benefit year. The employer's account may be charged for benefits paid in connection with a claim established after the expiration of the current benefit year.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw