

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM L WOODWARD
Claimant

APPEAL NO. 10A-UI-11393-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

OC: 11/15/09
Claimant: Respondent (1)

Section 96.4(3) – Able & Available
Section 96.19(38)(c) – Temporary Layoff
Section 96.7(2) – Employer Liability

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2010, reference 01, decision that allowed benefits effective June 24, 2010 based on an Agency conclusion that the claimant had been temporarily unemployed due to a temporary layoff. After due notice was issued, a hearing was held on October 21, 2010. Claimant participated. Shonoa Lemke represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant and wages reported by or for the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since June 24, 2010.

Whether the claimant has been partially unemployed from this employer since June 24, 2010.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning June 24, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a staffing agency. The employer places employees in long-term work assignments at General Mills. The claimant started an assignment at General Mills in December 2009. From June 24, 2010 through July 11, 2010, the General Mills plant was shut down. Both the General Mills staff and Spherion Staffing representative notified the Spherion employees, including the claimant, that the plant would be shutting down. Neither the General Mills staff nor the Spherion staff told the claimant he needed to report for another assignment during the shutdown. On June 26, the claimant received correspondence from Workforce Development and contacted the employer for information pertaining to the Workforce Development correspondence. The Spherion representative told the claimant at that time that he was supposed to contact Spherion staffing before he filed for unemployment insurance benefits. The employer did not mention or

offer a new assignment. The claimant returned to the assignment at General Mills on July 12, 2010 and continued in that assignment until August 4, 2010, when General Mills ended the assignment.

In February 2007, Spherion Staffing had the claimant sign a Policy and Procedures-Application Supplement document that contained a full page of single-space, small-font boilerplate work rules. At numbered paragraph 8 of 21 the document references an obligation to contact Spherion "as soon as my assignment ends and on a weekly basis..." The employer did not have the claimant sign a separate document that contained a clear and concise statement of the claimant's obligation to contact the employer within three working days of the end of his assignment or face possible denial of unemployment insurance benefits.

The claimant received unemployment insurance benefits for the weeks ending July 3 and 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence indicates that the claimant started an assignment at General Mills in December 2009, was off work due to a temporary plant shut down from June 24 through July 11, 2010 and returned to the same assignment on July 12, 2010. Though the claimant was in contact with the employer on June 26, 2010, there was no offer of employment at that time. Nor was there any offer of employment during the rest of the temporary shutdown. The employer's boilerplate work rules do not come close to satisfying the requirements of Iowa Code section 96.5(1)(j) regarding separations from temporary employment work assignments, and the employer therefore cannot claim that benefit of that statute to hinder the claimant's application for unemployment insurance benefits.

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".

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 claimant's time off from General Mills from June 24 through July 11, 2010 meets the definition of temporary unemployment. The claimant is eligible for benefits for the benefit weeks ending July 3 and 10, 2010, provided he is otherwise eligible. The employer's account may be charged for those benefits.

This matter will be remanded to the Claims Division to address the impact of the August separation on the claimant's eligibility for benefits and the employer's liability for benefits paid for the period beginning August 8, 2010. The Claims Division should also address the claimant's availability for work effective August 8, 2010.

DECISION:

The Agency representative's August 4, 2010, reference 01, is affirmed. The claimant was temporarily unemployed from June 24, 2010 through July 11, 2010. The claimant is eligible for benefits for the benefit weeks ending July 3 and 10, 2010, provided he is otherwise eligible. The employer's account may be charged for those benefits.

This matter will be remanded to the Claims Division to address the impact of the August separation on the claimant's eligibility for benefits and the employer's liability for benefits paid for the period beginning August 8, 2010. The Claims Division should also address the claimant's availability for work effective August 8, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw