

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL A MCDOWELL**  
Claimant

**APPEAL NO. 09A-UI-15515-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPLE CORPS LP  
APPLEBEES NEIGHBORHOOD  
GRILL & BAR**  
Employer

**Original Claim: 09/13/09  
Claimant: Appellant (2-R)**

871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

Carol McDowell filed a timely appeal from the October 14, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 17, 2009. Ms. McDowell participated and presented additional testimony through Barb Flactiff. Scott Simmons, General Manager, represented the employer and presented additional testimony through Tracy Swanson, Kitchen Manager.

**ISSUE:**

Whether Ms. McDowell separated from the employment for reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Carol McDowell was employed by Applebee's Neighborhood Grill & Bar has a prep cook and dishwasher starting in 2001 and last performed work for the employer on September 5, 2009. Ms. McDowell's immediate supervisors were Scott Simmons, General Manager, and Tracy Swanson, Kitchen Manager. Ms. Swanson made out the kitchen work schedule that included Ms. McDowell's work hours.

During the last few months of the employment, Ms. McDowell reduced her hours from 35 per week to 18 to 25 hours per week due to non-work related medical issues. During the last month and a half in the employment, Ms. McDowell's respiratory issues necessitated her use of a portable oxygen tank at work. Though the tank was cumbersome, Ms. McDowell was still able to perform her prep cook duties, but told the employer she could not perform her dishwashing duties or the new "expo" station duties the employer wanted her to learn. Ms. McDowell expected to upgrade her oxygen tank in the near future to something less cumbersome. Toward the end of the employment, the employer implemented a new policy that required all employees to be trained in an area outside their normal duties. The employer decided to have

Ms. McDowell train on the “expo” station, where Ms. McDowell would ready plates for the servers to take to guests in the dining room. The employer decided to have the line cooks train on the prep cook duties. This step all but eliminated Ms. McDowell’s prep cook work.

Ms. McDowell had not yet seen the new schedule that went into effect on Sunday, September 6, when she telephoned Mr. Simmons on that morning and asked whether she was scheduled to work that day. Ms. Swanson had scheduled Ms. McDowell for an expo station training shift that was to start at 11:00 a.m. Mr. Simmons erroneously looked at an old schedule instead of the new one and told Ms. McDowell she had no hours on the new schedule. Thereafter, Ms. McDowell waited for the employer to notify her that she had been placed back on the work schedule.

Three weeks later, Ms. McDowell contacted Ms. Swanson and asked whether she should return her work shirts. Ms. Swanson told Ms. McDowell that the employer had no work for her.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Workforce Development rule 871 IAC 24.1(113) 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 laborsaving 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.

Iowa Code section 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence indicates that Ms. McDowell reasonably concluded on September 6, 2009 that the employer had laid her off. This was confirmed three weeks later, when the kitchen manager told Ms. McDowell that the employer had no work for her.

Ms. McDowell involuntarily separated from the employment for no disqualifying reason. Ms. McDowell is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. McDowell.

The evidence in the record raises the issue of whether and to what extent Ms. McDowell has been able to work and available for work since she established her claim for benefits. This matter will be remanded to the Claims Division so that those issues may be addressed.

**DECISION:**

The Agency representative's October 14, 2009, reference 01, decision is reversed. The claimant was laid off effective September 6, 2009. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been both able to work and available for work within the requirements of the law since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw