

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L LEHMAN
Claimant

APPEAL NO. 09A-UI-03851-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

Original Claim: 06/29/08
Claimant: Respondent (5)

Iowa Code section 96.5(2)(a) – Discharge
Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 4, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 6, 2009. Claimant Terry Lehman participated. Tori Glade, Senior Staffing Consultant, represented the employer and presented additional testimony through Tammy Sanders, Director of Staffing. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant has been able to work and available work since February 15, 2009.

Whether the claimant separated from the employment for a 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: The employer is staffing agency that provides temporary employment assignments and temp-to-hire employment assignments. Terry Lehman established her employment relationship with Palmer Consulting on August 11, 2008 and worked in two temporary employment assignments. The first assignment was full-time and ran from December 29, 2008 until January 23, 2009, when the client business no longer needed Ms. Lehman's services. Ms. Lehman completed the assignment.

The second assignment started on January 26, 2009 and came to an end on or about February 24, 2009. The second assignment was a part-time data-entry assignment at Datavision Resources. Shortly before the assignment came to an end, Palmer Consulting notified Ms. Lehman that the client business and Palmer Consulting were going to reduce her pay from \$13.00 per hour to \$11.00 per hour. Palmer Consulting was reducing the wages of all the temporary workers at Datavision Resources by \$2.00 per hour. Ms. Lehman was not

pleased about the reduction in pay, but was willing to further consider the assignment under the belief that the work hours might increase. On or before February 24, the client business reported to Palmer Consulting that Ms. Lehman had been discussing with other temporary workers her displeasure with the wage reduction. Ms. Lehman was not alone in being displeased with the wage reduction. The client business notified Palmer Consulting that it would like to have Ms. Lehman continue in the assignment, but needed her to stop discussing the pay issue with other workers.

On February 24, Tammy Sanders, Director of Staffing at Palmer Consulting, contacted Ms. Lehman to discuss the client. During the conversation, Ms. Sanders told Ms. Lehman that the client business was not sure Ms. Lehman was a good fit for the assignment. Ms. Lehman expressed an interest in discussing with the client business whether the hours were due to increase. Palmer Consulting would not allow such a discussion to occur between Ms. Lehman and the client business. Ms. Lehman and Ms. Sanders took very different things from their conversation. Ms. Lehman believed she had been laid off from the assignment because the employer did not think she was a good fit. Ms. Sanders thought Ms. Lehman had quit due to the decrease in pay. After the conversation, Ms. Lehman stayed in contact with the employment agency for a couple of weeks before she gave up on getting an assignment through the agency.

REASONING AND CONCLUSIONS OF LAW:

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 weight of the evidence indicates that Ms. Lehman was at all relevant times available for full-time work.

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 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.

In truth, it really does not matter how the administrative law judge characterizes the separation. The separation was not for a reason that would disqualify Ms. Lehman for unemployment insurance benefits.

If the administrative law judge characterizes the separation as a voluntary quit, Ms. Lehman would be eligible for unemployment insurance benefits because the quit would have been based a significant change in the conditions of the employment, the reduction of the wage from \$13.00 per hour to \$11.00 per hour. See Iowa Code section 96.5(1) and 871 IAC 24.26(4).

If the administrative law judge characterizes the separation as a lay-off, the separation would not disqualify Ms. Lehman for unemployment insurance benefits.

If the administrative law judge characterizes the separation as a discharge from the assignment, the evidence fails to establish misconduct in connection with the employment that would disqualify Ms. Lehman for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a). The fact that Ms. Lehman commiserated with other temporary employees about a blanket \$2.00 reduction in wages might demonstrate a good-faith error in judgment, but, under the circumstances, would not demonstrate willful and/or wanton disregard of the interests of the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lehman separated from the employment for no disqualifying

reason. Accordingly, Ms. Lehman is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Lehman.

DECISION:

The Agency representative's March 4, 2009, reference 01, decision is modified as follows. The claimant has been able and available for work at all relevant times and since February 15, 2009, the date referenced in the reference 01 decision.

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

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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