

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY S EWING**  
Claimant

**APPEAL NO. 09A-UI-07483-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABV MANAGEMENT INC**  
Employer

**Original Claim: 03/29/09  
Claimant: Respondent (1)**

871 IAC 24.1(113)a – Temporary Layoff

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated May 7, 2009, reference 03, that held the claimant was laid off for lack of work on March 7, 2009, and benefits are allowed.

A telephone hearing was scheduled for and held on June 5, 2009. The claimant did not participate. Rich Griffith, area supervisor, participated on behalf of the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct or voluntarily left for good cause.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, finds: The claimant began working for the employer at a Fort Dodge, Iowa, store location on May 9, 2008. The claimant last worked at the store on March 7, 2009.

The claimant requested a transfer to an employer's store in Des Moines that was approved. The claimant was instructed to contact the Des Moines store manager in order to be put on the work schedule. The claimant made several calls to the Des Moines store asking for the "named" store manager, and was advised that she was not there.

Unbeknownst to the claimant, the store manager that he was instructed to contact had been replaced. When Supervisor Griffith contacted the Des Moines store and inquired about how the claimant was doing, he learned that the store was unable to locate the claimant to put him on the work schedule.

Supervisor Griffith located the claimant, explained to him what happened, and he was put on the work schedule and began working about the last week of April, 2009.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant's separation of employment due to transferring from one store to another constitutes a temporary layoff that is a separation for no disqualifiable reason.

871 IAC 24.1(113)a provides:

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

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

After the claimant's transfer approval, he did what he was instructed to do by the employer in order to be put on the work schedule at the Des Moines store. He called the Des Moines store and specifically advised that he was seeking a "named" store manager. The claimant was told that she was not available, and there was no reason for him to believe that there was any issue with his employment.

It was not until Area Supervisor Griffith became aware that the claimant had been calling and asking for a supervisor who had been replaced, and that the store had no way of contacting the claimant, that he was able to locate him and get him on the work schedule.

Since the claimant is without fault for the period of unemployment during the transfer process, it is considered a temporary layoff for no disqualifiable reason.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant claimed for and received unemployment benefits through the week ending April 25, 2009 that appears to be during the period of the temporary layoff until he became re-employed at the Des Moines store. Since the claimant is entitled to receive benefits during this layoff period, there is no overpayment decision.

**DECISION:**

The decision of the department representative dated May 7, 2009, reference 03, is affirmed. The claimant experienced a temporary layoff from employment on March 7, 2009, and benefits are allowed, provided he is otherwise eligible.

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R. L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

srs/kjw