

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT T MCELWEE
Claimant

APPEAL NO. 12A-UI-13847-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VICTORYSTORE.COM
Employer

OC: 10/07/12
Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Victorystore.Com filed a timely appeal from the representative's decision dated November 19, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits effective October 7, 2012 finding that the claimant was still employed working on call. After due notice was provided, a telephone hearing was held on December 19, 2012. The claimant participated personally. The employer participated by Ms. Christe Gosney, Human Resource Director.

ISSUE:

At issue in this matter is whether the claimant was still employed working part time or on call effective October 7, 2012.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Robert McElwee began employment with Victorystore.Com on April 6, 2012 and was employed as a temporary seasonal sign department worker until October 9, 2012 when the seasonal employment came to an end by its own terms. Ms. McElwee was informed at that time that he might be recalled for additional work. The claimant opened a claim for unemployment insurance benefits with an effective date of October 7, 2012. On October 11, 2012 the claimant was called back to work by Victorystore.Com and continued working until October 30, 2012 when the claimant's employment came to an end due to the seasonal nature of the employer's work. Mr. McElwee completed all terms of the agreed periods of employment and the claimant's separation from employment was dictated by the employer based upon the employer's business needs.

The question before the administrative law judge is whether the evidence in the record reflects that the claimant is still employed, working on call, effective October 7, 2012. It does.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record reflects that the claimant is still employed, working on call effective October 7, 2012. It does.

871 IAC 24.26(19) and (22) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

(22) The claimant was hired for a specific period of time and completed the contract of hire by working until this specific period of time had lapsed. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employees shall be considered to have voluntarily quit employment.

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.

In this matter the evidence in the record establishes that Mr. McElwee was initially hired by the employer as a temporary seasonal worker and the employer set the date of employment. Mr. McElwee fulfilled the conditions of employment by staying with the company until was told that his services were no longer needed on October 9, 2012. The claimant at that time was told that he might be recalled by the employer. Based upon that information Mr. McElwee opened a claim for unemployment insurance benefits relaying those facts to Iowa Workforce Development. After temporarily being laid off work by Victorystore.Com and opening his claim for benefits on October 7, 2012, the claimant was in fact, called back to work by the employer

on October 11, 2012 and continued to work until the temporary seasonal employer ended the employment due to the seasonal nature of the work.

The claimant was then separated by the employer after completing the specific period of time in completing the contract of hire. The reason for the claimant leaving employment at that time was attributable to the employer and nondisqualifying. Benefits were correctly allowed effective October 7, 2012 providing that the claimant has met or has continued to meet all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated November 19, 2012, reference 01, is affirmed. The claimant was available for work effective October 7, 2012 and potentially eligible to receive unemployment insurance benefits, providing that he has met all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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