

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA URBINA
Claimant

APPEAL NO. 13A-UI-13850-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 11/03/13
Claimant: Respondent (5-R)**

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 10, 2013, reference 01, decision that allowed benefits based on an agency conclusion that the claimant had separated from the employer on October 31, 2013 for good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on January 13, 2014. Claimant Gloria Urbina participated. Maria Mays represented the employer and presented additional testimony through James Cole. Spanish-English interpreter Gisella Young assisted with the hearing. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUE:

Whether the October 31, 2013 separation from the employment was for a reason that disqualifies the claimant for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sedona Staffing is a temporary employment agency. Sedona Staffing supplies production workers to RockTenn in Iowa City. In June 2013, claimant Gloria Urbina began performing work for RockTenn through Sedona Staffing. Ms. Urbina started her second assignment at RockTenn in September 2013 and last performed work in that assignment on October 31, 2013. Ms. Urbina's immediate supervisor in the assignment was Mary Howell. Ms. Howell is a Sedona Staffing supervisor who works onsite at the RockTenn facility.

After Ms. Urbina worked on October 31, 2013, she continued to report for work on a daily basis, but Ms. Howell would not assign duties to her. When Ms. Urbina appeared, Ms. Howell would direct her to take a seat. Ms. Howell would then assign work to other employees. Ms. Howell would then send Ms. Urbina home. This went on until November 11, 2013, when Ms. Howell finally assigned work to Ms. Urbina.

REASONING AND CONCLUSIONS OF LAW:

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

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not present testimony from Ms. Urbina's immediate supervisor, Ms. Howell. The employer failed to present sufficient testimony, from people with firsthand knowledge, to rebut Ms. Urbina's assert that she continued to report for work but that Ms. Howell would not provide work between October 31, 2013 and November 11, 2013. The weight of the evidence establishes that Ms. Urbina was temporarily laid off from the assignment at RockTenn during the period of October 31, 2013 through November 10, 2013. The layoff would not disqualify Ms. Urbina for unemployment insurance benefits. The employer's account may be charged for benefits.

This matter is remanded to the Claims Division for determination adjudication any separation that occurred *after* Ms. Urbina returned to work at RockTenn on November 11, 2013.

DECISION:

The Agency representative's December 10, 2013, reference 01, decision is modified as follows. The claimant was temporarily laid off from her assignment at RockTenn during the period of October 31, 2013 through November 10, 2013. The temporary layoff does not disqualify the claimant for benefits. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

This matter is remanded to the Claims Division for adjudication of any separation that occurred *after* the claimant returned to work on November 11, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css