

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDITH L URBANEK**  
Claimant

**APPEAL NO. 09A-UI-05777-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WALGREEN CO**  
Employer

**OC: 02/22/09**  
**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge/Misconduct  
871 IAC 24.1(113)a – Layoff  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Walgreen Company filed a timely appeal from a representative's decision dated March 30, 2009, reference 01, which held that the claimant had been laid off due to lack of work on February 20, 2009. After due notice, a telephone conference hearing was scheduled for an held on May 7, 2009. Although duly notified, the claimant did not respond to the notice of hearing and did not participate at the hearing. The employer participated by Amy Adamson, Store Manager.

**ISSUE:**

At issue is whether the claimant has had a separation from employment.

**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 is employed as an assistant manager by the Walgreen Company. Ms. Urbanek began her employment in July 1998 and continues to be employed at the time of hearing. The claimant is employed on a full-time basis and is paid by the hour.

Ms. Urbanek opened a claim for unemployment insurance benefits effective February 22, 2009. At that time she continued to be employed on a full-time basis by the Walgreen Company. Previous authorization for up to four hours a week overtime for assistant managers had been withdrawn by the company, however the claimant continued to be offered 40 hours per week of employment.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant had been laid off or otherwise separated from employment. It does not.

The evidence in the record clearly establishes that Ms. Urbanek began employment on July 20, 1998 for the Walgreen Company and continues to be employed on a full-time basis at the time of hearing. The evidence in the record establishes that the claimant was not laid off work on or about February 20, 2009 and that no separation from employment has taken place.

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.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-18-a provides:

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by: . . .

For the reasons stated herein, the administrative law judge concludes that the claimant was not laid off work and is not eligible to receive unemployment insurance benefits as no separation from employment has taken place. The evidence in the record establishes that the claimant continues to be employed on a full-time basis and has not been separated from employment for any reason by the Walgreen Company.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated March 30, 2009, reference 01, is reversed. No separation from employment has taken place. The claimant is ineligible to receive unemployment insurance benefits. The issue of whether the claimant has received and/or must repay unemployment benefits is remanded to the UIS division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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