

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KJERSTI ROGNES**  
Claimant

**OKOBOJI WINTER PROJECT INC**  
Employer

**APPEAL 17A-UI-01028-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/01/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Okoboji Winter Project, Inc. (employer) filed an appeal from the January 17, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon the determination it laid off Kjersti Rognes (claimant) due to a lack of work. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Owner Susan Mau.

**ISSUES:**

Was the claimant laid off due to a lack of work?  
Has the claimant been overpaid unemployment insurance benefits?  
Can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed in a seasonal full-time position as a Bartender and Shift Manager beginning on April 20, 2016, and was separated from employment on November 30, 2016. The claimant and other seasonal employees were all separated at the same time. The employer had no work for the claimant after November 30, 2016. Following her separation, the claimant began another job in a resort in Mexico.

The administrative record reflects that the claimant has not filed a continued weekly claim for benefits or received unemployment insurance benefits since filing a claim with an effective date of January 1, 2017. Iowa Workforce Development did not schedule or hold a fact-finding interview prior to issuing the unemployment insurance decision dated January 17, 2017 (reference 01).

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work. Benefits are allowed, provided she is otherwise eligible.

Iowa law disqualifies individuals who voluntarily quit employment without good cause attributable to the employer from receiving unemployment insurance benefits. Iowa Code § 96.5(1). The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). However, a layoff is defined as a suspension in pay status which is initiated by the employer without prejudice to the worker due to the termination of seasonal employment or any circumstance in which the employer lacks work for the employee. Iowa Admin. Code r. 871-24.1(113)a.

In this case, the employer had no continuing work for the claimant after November 30, 2016. The employer's witness had no knowledge that the claimant made any statements or engaged in any conduct indicating an intention to voluntarily leave her employment. The employer has not met the burden of proof to show the claimant voluntarily left her employment. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

As benefits are allowed and the claimant has not received any unemployment insurance benefits at this point, the issues of overpayment and repayment are moot. The employer's account remains chargeable if, in the future, the claimant makes a continued claim for benefits for which she is found to be eligible and she has not requalified for benefits by earning insured wages ten times her weekly benefit amount.

**DECISION:**

The January 17, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment and repayment are moot. The employer's account remains chargeable if, in the future, the claimant makes a continued claim for benefits for which she is found to be eligible and she has not requalified for benefits by earning insured wages ten times her weekly benefit amount.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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