

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES W SWAN
Claimant

APPEAL NO. 10A-UI-15780-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER BARGE LINE INC
Employer

OC: 01/10/10
Claimant: Respondent (4-R)

871 IAC 24.2(113)a – Short-Term Layoff

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated November 12, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 29, 2010. The claimant participated. The employer participated by Randy Kirschbaum, marine manager. The record consists of the testimony of Charles Swan; the testimony of Randy Kirschbaum; and Employer's Exhibit 1.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer operates tow boats and barges on the Mississippi River. The claimant was hired on May 19, 2008, as a Deck Hand D. The claimant's work schedule requires him to spend 30 days on a boat as part of a 10-person crew. He then gets 30 days off. The claimant is paid both for days on the boat and days off the boat. He could elect, however, to draw his pay for time off the boat during the time he was on the boat. (Exhibit 1) During his days off the boat, the claimant's benefits, including insurance, continued.

The claimant was on the boat from July 22, 2010, through August 18, 2010. He then began his 30-day period off the boat. He was scheduled to return on September 15, 2010, but there was no work available. The claimant was on short-term layoff from September 15, 2010, through September 23, 2010.

REASONING AND CONCLUSIONS OF LAW:

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.

The representative concluded that the claimant was on short-term layoff when he stepped off the boat on August 18, 2010 and ruled that the claimant was eligible for benefits beginning August 15, 2010. The evidence is uncontroverted that the claimant was not on short-term layoff but, rather, was beginning his 30 days off the boat in accordance with his employment contract. The claimant was still an employee and was being paid in accordance with the employment contract.

Randy Kirschbaum testified that the claimant was scheduled to be back on the boat on September 15, 2010. There was no work available then and the claimant was on a short-term layoff from September 15, 2010 to September 23, 2010. The claimant would be eligible for benefits for that period.

DECISION:

The representative's decision dated November 12, 2010, reference 01, is modified in favor of the appellant. The claimant was on a short-term layoff from September 15, 2010, through September 23, 2010, and is eligible for unemployment benefits for that time period only.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw