

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HATTIE M HOLMES
Claimant

APPEAL NO. 14A-UI-12789-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNOVATIVE AG SERVICES CO
Employer

**OC: 11/23/14
Claimant: Respondent (3)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Innovative Ag Services Company filed a timely appeal from a representative's decision dated December 4, 2014 (reference 02) finding that the claimant's unemployment was due to a short-term layoff. After due notice was provided, a telephone hearing was held on January 13, 2015. Claimant participated. The employer participated by Mr. Craig Schroeder, Human Resource Generalist 2.

ISSUE:

At issue is whether the claimant was temporarily laid off and whether the employer's request that the claimant should be required to make a weekly work search should be approved.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Hattie Holmes was most recently employed by Innovative Ag Services Company from September 30, 2014 until November 15, 2014 when her seasonal employment, as a customer service worker for the company, came to an end. Ms. Holmes was employed full time during the seasonal period and was paid by the hour.

The claimant was laid off at the time her seasonal work for the company came to an end, but the employer was unsure due to future business conditions whether the claimant would be re-called to work during, the next season. Because there was no guarantee of re-employment for the claimant during the next season, Innovative Ag Services Company, had requested that the claimant and other similarly situated individuals be classified as non-attached to Innovative Ag Services Company and be required to seek employment with other perspective employers while claiming unemployment insurance benefits.

It is the employer's position that because their business conditions may vary substantially and the employer's staffing needs may also vary, the employer believes that it is in the best interests of the company and the claimant, for the claimant to seek employment with other perspective employers while claiming unemployment insurance benefits after being seasonally laid-off from Innovative Ag Services Company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer's request to have the claimant, who was laid off at the end of seasonal employment, be considered as non-attached and required to seek work with other perspective employers should be approved. It should.

Iowa Admin. Code r. 871-24.22(1)a, (2)c provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

c. Intermittent employment. An individual cannot restrict employability to only temporary or intermittent work until recalled by a regular employer.

Iowa Admin. Code r. 871-24.23(27), (28) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

In the case at hand, the evidence in the record establishes that the claimant's unemployment was not due to a short-term layoff but instead due to a long-term seasonal layoff. The evidence also shows the employer had specified to the Agency that seasonally laid off workers were not guaranteed to be recalled to work during the next period of seasonal employment, due to the uncertainty of business conditions. The employer requested at the time of the claims being filed, that the seasonally laid off employee be required to seek work with other perspective employers each week that they claimed unemployment insurance benefits.

Based upon the evidence in the record, the administrative law judge concludes that the employer's request that the claimant be required to seek work with other perspective employers each week that they claim unemployment insurance benefits was timely, reasonable, and is approved.

DECISION:

The representative's decision dated December 4, 2014 (reference 02) is affirmed as modified. The portion of the determination finding that the claimant was able and available for work is affirmed, the portion of the determination finding that the claimant was unemployed due to a short-term layoff is modified to find that the claimant was unemployed due to a seasonal layoff with no guarantee of being recalled to work for the next employment season. As such, the claimant is considered to be unattached to this employer and is required to seek work by contacting at least two perspective employers each week that she claimant claims unemployment insurance benefits. This requirement becomes effective for the claim week that begins at least ten days following the date of this decision. The adjudicator's determination is affirmed as modified.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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