

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW W COLE
Claimant

APPEAL NO. 14A-UI-05649-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEVENTH AVENUE INC
Employer

OC: 04/27/14
Claimant: Respondent (1-R)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 19, 2014, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible and that held the employer's account could be charged based on an agency conclusion that the claimant had been laid off on February 26, 2014. After due notice was issued, a hearing was held on June 25, 2014. Claimant Andrew Cole did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Grace Cooper represented the employer. Exhibits One through Five were received into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding within the meaning of the law.

ISSUE:

Whether Mr. Cole separated from the employment for a reason that disqualifies him for unemployment insurance 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: Andrew Cole was employed by Seventh Avenue, Inc. /Colony Brands, as a part-time forklift operator. Mr. Cole commenced the employment in September 2013. Mr. Cole worked at the employer's facility in Peosta. On January 3, 2014, Kevin Hintz, Assistant Manager, suspended Mr. Cole from the employment by completely removing him from the work schedule. The employer recalled Mr. Cole to perform work for the employer on February 25, 2014. On March 4, 2014, Tammy Hedley, Timekeeper/Attendance Coordinator contacted Mr. Cole by telephone. At that time, Mr. Cole said something about needing to resign due to a lack of transportation and childcare issues. Ms. Hedley suggested instead that Mr. Cole "take a layoff," so that he could be recalled to the employment during the employer's busy time. On March 5, 2014, Ms. Hedley completed an "Employee Change Notice" that documented a February 26, 2014 layoff date.

Mr. Cole established a claim for unemployment insurance benefits that was effective April 27, 2014. As of June 23, 2014, Mr. Cole had received \$1,881.00 in benefits for the period of April 27, 2014 through June 28, 2014. Seventh Avenue, Inc., is a base period employer.

On May 16, 2014, an Iowa Workforce Development claims deputy held a telephonic fact-finding interview. Grace Cooper, Human Resources Coordinator, represented the employer at the fact-finding interview. Ms. Cooper works in Clinton and lacked personal knowledge of Mr. Cole's work at the employer's Peosta facility. At the May 16, 2014, fact-finding interview, the employer did not present a written or oral statement from anyone with personal knowledge of Mr. Cole's work at the Peosta facility or his separation from work at that facility. At the fact-finding interview, Ms. Cooper asserted that the claimant had requested a layoff due to childcare and transportation issues. Ms. Cooper told the claims deputy that the employer's work was seasonal and that she could not say whether the claimant would have been laid off at the time of the separation date in February or later. Ms. Cooper told the claims deputy that the employer would send Mr. Cole a letter when he was recalled to work. The claimant asserted at fact-finding that he had returned to work on February 25, 2014, after a two-week voluntary absence and was then told on February 26, 2014 that he was laid off due to a lack of work. When the claims deputy asked Ms. Cooper to respond to the claimant's assertion, Ms. Cooper advised that she did not work at the warehouse where the claimant worked and, therefore, could not say what his supervisor told him.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The parties have restricted the presentation of evidence. The claimant did not respond to the hearing notice or participate in the hearing. The employer elected not to present testimony from anyone with personal knowledge of the claimant's employment or separation from the employment. The employer bears the burden of proving a separation that disqualifies the claimant for benefits. See Iowa Code section 96.6(2). The weight of the evidence indicates that Mr. Cole was laid off effective February 26, 2014. This is how the employer coded Mr. Cole's separation close in time to the separation. On March 4, the claimant made some comment about resigning the employment. This occurred after the employer had substantially changed the conditions of the employment at the beginning of January 2014 by placing Mr. Cole on "on-call" status. On March 4, 2014, the employer talked Mr. Cole out of resigning from the employment. Instead, the employer laid off Mr. Cole, with the mutual understanding that the employer would recall him to the employment when the employer entered its busy season. Because the separation was neither due to a voluntary quit without good cause attributable to

the employer or a discharge for misconduct, Mr. Cole is eligible for benefits, provided he is otherwise eligible and the employer's account may be charged. See Iowa Code section 96.5(1) (regarding voluntary quits) and 96.5(2)(a) (regarding discharges for misconduct).

DECISION:

The claims deputy's May 19, 2014, reference 01, decision is affirmed. The claimant was laid off effective February 26, 2014. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been available for work since he established the claim for benefits that was effective April 27, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs