

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY L TWEDT
Claimant

WILLIAM PENN UNIVERSITY
Employer

APPEAL 17A-UI-08297-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Respondent (1-R)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
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:

The employer filed an appeal from the August 8, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was laid off due to a lack of work. The parties were properly notified of the hearing. A telephone hearing was held on September 1, 2017. The claimant, Gary L. Twedt, participated, and was represented by Stuart Higgins, Attorney at Law. The employer, William Penn University, participated through Bonnie Johnson, Vice President of Finance; and was represented by Tara Hall, Attorney at Law. Employer's Exhibit 1 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Was claimant's separation from employment a layoff, a discharge for misconduct, or a voluntary quit without good cause attributable to the employer?
Has the claimant been overpaid unemployment insurance benefits, and if so, 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: Claimant was employed full time, most recently as a grounds technician, from April 1, 2012, until June 30, 2017, when he was laid off by the employer. In 2017, the employer made a formal decision to outsource its maintenance and housekeeping departments to Sodexho, a third-party company. All affected employees were notified during a meeting in mid-May, but claimant did not attend this meeting. Claimant learned about the transition to Sodexho from a work-study student who was affected by this transition. Effective July 1, 2017, Sodexho took over these responsibilities. The employer notified each employee in these departments, including claimant, that it would no longer be the employer after June 30, 2017. (Exhibit 1) In order to transition to employment with Sodexho, claimant would have been required to complete an application and undergo a background check.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.1(113)a provides:

Definitions. Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

...

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.

The evidence in this case establishes that claimant separated from employment through no fault of his own. He did not voluntarily end his employment with this employer, and he was not discharged for any disqualifying misconduct. Rather, claimant was laid off and employer had no work available for claimant after June 30, 2017. The employer eliminated claimant's position effective July 1, 2017, by outsourcing its housekeeping and maintenance departments to Sodexo. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The August 8, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was separated from employment for no disqualifying reason when he was laid off. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

REMAND:

The issue of whether claimant failed to accept a suitable offer of work from Sodexo is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn