

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL W LUDWIG
Claimant

APPEAL NO. 11A-UI-13064-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WENCK FEEDS INC
Employer

OC: 09/04/11
Claimant: Respondent (1)

871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 29, 2011, reference 01, that concluded the claimant was eligible for benefits because he was employed on a temporary basis and completed his work assignments. A telephone hearing was held on October 26, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Wenck participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was eligible for \$86.00 per week in benefits based on the wages reported by the employer and for Pit Stop Auto Wash. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant laid off due to lack of work?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a truck driver from May 2010 to October 2010. The work was on-call and the employer would contact the claimant when it needed some extra drivers. The claimant completed the work assignment given to him. In October 2010, the employer informed the claimant that it no longer had work for the claimant.

The claimant worked part-time for Pit Stop Auto Wash from December 2010 to April 2011 and then was laid off.

The claimant contacted the employer again in 2011 about performing truck-driving work, but the employer had enough drivers and did not need the claimant.

The claimant filed for unemployment insurance benefits with an effective date of August 28, 2011. The claimant was eligible for \$86.00 per week in benefits based on the wages reported by the employer and for Pit Stop Auto Wash.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. The unemployment rules provide that a claimant employed on a temporary basis for assignment to spot jobs or casual labor work is considered to have fulfilled the contract of hire when each of the jobs was completed and is eligible for benefits. 871 IAC 24.26(19). The rules include the termination of seasonal or temporary employment in the definition of a layoff. 871 IAC 24.1(113)a. The law does not require that an employee work full-time to receive benefits, and in fact the law states that the department shall pass rules regarding the eligibility of part-time workers for benefits. Iowa Code § 96-3-6.

In this case, the claimant was employed temporarily on a part-time basis. He was on-call to work when the employer needed him. He did not quit and was not discharged for any misconduct. He was laid off when the employer no longer needed him.

The law provides that a claimant whose wage credits consist exclusively of wage credits by performing on-call work is not considered an unemployed person under the unemployment law. 871 IAC 24.22(2)i(3). In this case, however, the claimant's wage credits are not exclusively from on-call work, since he also worked for Pit Stop Auto Wash. The claimant is qualified for benefits.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account shall be charged for benefits paid to the claimant because when he filed for benefits in August 2011, the employer was not providing the same employment as it provided in the base period.

DECISION:

The unemployment insurance decision dated September 29, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account may be charged for its proportional share of benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw