

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A ACHENBACH
Claimant

APPEAL NO. 13A-UI-13670-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITYWIDE CLEANERS INC
Employer

OC: 11/03/13
Claimant: Respondent (4)

871 IAC 24.1(113) – Layoff
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 5, 2013, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible, based on an agency conclusion that the claimant was laid off effective November 1, 2013. After due notice was issued, a hearing was held on January 7, 2014. Claimant Troy Achenbach participated. Travis Klooster represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-13671-JTT. Exhibit One was received into evidence. The administrative law judge took official notice of the agency's administrative record (DBRO) of benefits disbursed to the claimant. Exhibit One was received into evidence.

The parties stipulated that the employer participated in the fact-finding interview that led to the lower decision that allowed benefits.

ISSUES:

Whether Mr. Achenbach separated from the employment for a reason that would disqualify him for unemployment insurance benefits.

Whether Mr. Achenbach has been overpaid benefits.

Whether Mr. Achenbach is required to repay benefits.

Whether the employer's account may be charged for benefits paid to Mr. Achenbach.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Troy Achenbach began his part-time employment with Citywide Cleaners in November 2012 and last performed work for the employer on November 1, 2013. Mr. Achenbach's usual duties involved janitorial work and light maintenance. The employer also had Mr. Achenbach occasionally fill in for delivery drivers. The employer paid Mr. Achenbach \$10.00 an hour for the regular duties and the substitute driver work. Mr. Achenbach's usual work hours were 2:30 p.m. to 6:30 p.m.,

Monday through Friday. When Mr. Achenbach filled in for delivery drivers, he would start his work day at 7:00 a.m. and finish at 1:00 p.m. Travis Klooster, Plant Manager, and Justin Christian, Assistant Plant Manager, were Mr. Achenbach's immediate supervisors.

On November 1, 2013, Mr. Klooster notified Mr. Achenbach that the employer was eliminating his janitorial and maintenance duties due to a lack of work. Mr. Klooster told Mr. Achenbach that his hours would be divided amongst other employees who needed hours. Mr. Klooster told Mr. Achenbach that if he did not let Mr. Achenbach go from the janitorial and maintenance duties, Mr. Klooster would be in trouble with his own supervisor. The layoff was to take effect immediately. Mr. Achenbach asked whether the employer would provide him with two weeks of additional employment before the layoff went into effect. Mr. Klooster agreed to allow Mr. Achenbach to continue in the employment two more weeks. Thus, the effective layoff date was to be November 14, 2013.

On November 1, shortly after the layoff discussion took place, Mr. Achenbach returned to Mr. Klooster and asked whether he might be able to perform delivery driver work for the employer. Mr. Klooster agreed to think about it and to further discuss the matter with Mr. Achenbach on the following Monday, November 4, 2013. As part of the discussion on November 1, Mr. Klooster spoke casually to Mr. Achenbach about performing delivery duties that were currently assigned to another employee. Those duties would provide Mr. Achenbach with only two hours of work per day. Mr. Klooster also spoke casually to Mr. Achenbach about filling in for other drivers and that such work might result in substantial hours some weeks and zero hours other weeks.

On Monday, November 4 and Tuesday, November 5, Mr. Klooster was out ill. Mr. Klooster did not speak to Mr. Achenbach further about possible delivery driver duties. On November 4, Mr. Achenbach called the workplace, asked for Mr. Klooster, and then spoke with Mr. Christian. Mr. Achenbach told Mr. Christian that he had decided not to further pursue the possible driving duties and to just move on instead. There was no further contact between the parties. Mr. Achenbach did not appear for or work the additional two weeks the employer had agreed to provide.

Mr. Achenbach established a claim for unemployment insurance benefits that was effective November 3, 2013 and received benefits that included benefits for nine weeks between November 3, 2013 and January 4, 2014. For the week that ended November 9, 2013, Mr. Achenbach received \$141.00 in benefits. For the week that ended November 16, 2013, Mr. Achenbach received \$141.00 in benefits.

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.

Iowa Administrative Code rule 871 IAC 24.26(13) provides as follows:

A claimant who, when told of a scheduled future layoff, leaves employment before the layoff date shall be deemed to be not available for work until the future separation date designated by the employer. After the employer-designated date, the separation shall be considered a layoff.

Mr. Achenbach was laid off effective November 15, 2013. The casual conversation *after* the notice of layoff did not amount to an offer of employment as a delivery driver. The layoff would not disqualify Mr. Achenbach for unemployment insurance benefits. See Iowa Code section 96.5(1) (regarding voluntary quits) and 96.5(2) (regarding discharges for misconduct). However, Mr. Achenbach's election to separate from the employment on November 4, 2013, rather than continue to perform work through the amended layoff date of November 15, 2013, disqualifies Mr. Achenbach for benefits for the weeks ending November 9 and 16, 2013. Effective the week that started November 17, 2013, Mr. Achenbach was eligible for benefits, provided he was otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

Because Mr. Achenbach elected to separate from the employment prior to the amended November 15, 2013 layoff date, the \$282.00 in benefits he received for the two-week period of November 3, 2013 through November 16, 2013 constitutes an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Achenbach is required to repay those benefits.

DECISION:

The Agency representative's December 5, 2013, reference 02, decision is modified as follows. The claimant was laid off effective November 15, 2013. Effective the week that started November 17, 2013, the claimant was eligible for benefits, provided he was otherwise eligible.

The employer's account may be charged for benefits paid to the claimant for the period that began November 17, 2013. Because the claimant elected to separate from the employment prior to the amended November 15, 2013 layoff date, the \$282.00 in benefits he received for the two-week period of November 3, 2013 through November 16, 2013 constitutes an overpayment of benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay those benefits. The employer's account will not be charged for the benefits paid to the claimant for the two-week period of November 3, 2013 through November 16, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs