

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY D JONES

Claimant

APPEAL NO. 08A-UI-01862-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TIPTON SAWMILL & MILLWORKS

Employer

**OC: 10/28/07 R: 03
Claimant: Appellant (2)**

871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

Rodney Jones (claimant) appealed a representative's February 20, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Tipton Sawmill & Millworks (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 11, 2008. The claimant participated personally. The employer participated by Stan Kittleson, Owner; Ryan Nesham, Stepson and Former Employee; and Charles Frymoyer, Prospective Buyer.

ISSUE:

The issue is whether the claimant was laid off for lack of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 22, 2006, as a full-time manager and sawyer. On or about August 27, 2007, the employer had a meeting with the claimant, his wife and his stepson. The employer told his employees that he was out of money and resources. He was going to lay off the claimant's wife and his stepson. The last day would be August 31, 2007, and the employer was going to try to sell the business. He looked at the claimant, put his hands in the air and said he did not know what to do. The claimant was upset because he and his wife moved to the area to work at the saw mill. They were living in a place owned by the employer on the property.

On or about August 31, 2007, the employer met with the claimant and his wife about changing the due date for rent from the fifteenth of the month to the first of the month. The claimant got up and left at the beginning of the conversation. The wife and employer continued the meeting. August 31, 2007 was the claimant and his wife's last day of work.

The employer continues to sell firewood and lumber from the property.

The claimant's and the employer's testimony is contradictory. The administrative law judge finds the claimant's testimony to be more credible because the employer's testimony was internally inconsistent. Mr. Kittleson stated the claimant and he were alone and the claimant resigned. Later Mr. Kittleson said the claimant's wife was in the room right before the claimant resigned and walked out.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 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.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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 employer laid the claimant off for lack of work. When an employer suspends a claimant from work status the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 20, 2008 decision (reference 01) is reversed. The employer laid the claimant off for lack of work. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css