

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY W ROSS

Claimant

APPEAL NO. 12A-UI-02216-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC

LABOR WORLD OF IOWA

Employer

OC: 01/01/12

Claimant: Respondent (1)

Section 96.5-1 - Layoff

STATEMENT OF THE CASE:

USA Staffing Inc. filed a timely appeal from a representative's decision dated February 23, 2012, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 20, 2012. The claimant participated. The employer participated by Ms. Jodi McGonigle, Director of Business Development.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cody Ross began employment with USA Staffing Inc. on January 6, 2011 and was assigned to work as a commercial framing carpenter for the Shaw Lundquist Company. Mr. Ross was paid by the hour. His USA Staffing contact person at the job site was Bob Paten. The claimant's job assignment ended on December 20, 2011.

On December 20, 2011, Mr. Ross reported to work and was given supplemental fill-in work by Mr. Paten that morning. In a situation unrelated to Mr. Ross's employment another employee who shared a ride to work with Mr. Ross had a dispute with Mr. Paten and a job separation took place between the other employee and the client employer that morning.

When Mr. Ross went to Mr. Paten to ask a question about the assignment that Mr. Ross was working on, Mr. Paten repeatedly asked the claimant, "Are you ready for a layoff too?" Although Mr. Ross clearly stated that it was not his intention or desire to "quit" on at least two occasions Mr. Paten continued to repeat the question perhaps believing because the parties rode together that Mr. Ross intended to leave as well. When Mr. Ross stated, "If you mean you are laying me off ... sure." Mr. Paten instructed Mr. Ross to turn in his timecard and the claimant did so. Believing that he had been laid off from his temporary assignment, Mr. Ross returned to USA Staffing's offices that day to report that the assignment had ended and to look for additional work. When a manager at the office inquired as to whether Mr. Ross had "walked off the job"

Mr. Ross replied that he had not done so but that he had been laid off. Mr. Ross reported back to USA Staffing Inc.'s offices the next working day and for a number of days thereafter in an effort to secure work but no additional assignments were available to the claimant. After approximately a one-week period Mr. Ross filed a claim for unemployment insurance benefits.

It is the employer's position that the claimant chose to quit his job along with another employee and that the claimant was ineligible for additional assignments because he had walked off the job.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does.

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 testimony in this case is highly disputed. The administrative law judge having considered the evidence in the record at length concludes that the claimant was laid off by USA Staffing Inc. on December 20, 2011 and that the claimant contacted the temporary employer within three working days to report that the temporary assignment had ended and to make himself available for additional job assignments with the company.

The evidence in the record establishes that Mr. Ross had reported to work on December 20, 2011 and had been given some temporary keep busy type work to do by Bob Paten, an on-site supervisor of USA Staffing Inc. When another employee who Mr. Ross had shared a ride to work with became engaged in a dispute and left employment, it appears that Mr. Paten concluded that Mr. Ross's intention was also to quit employment that day. Although the claimant clearly stated to Mr. Paten on at least two occasions that he was "not quitting" Mr. Paten continued to repeat the question. When Mr. Ross clarified that it was Mr. Paten's intention to "lay him off" Mr. Ross agreed to be laid off. The claimant followed a course of conduct consistent with being laid off by reporting back to USA Staffing Inc.'s offices that day to report that the assignment had ended and to subsequently look for additional work through the temporary staffing company.

In this matter the claimant appeared personally and provided sworn first-hand testimony. In contrast the employer relies solely on hearsay evidence in support of its position. While hearsay evidence is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant's testimony to be credible and finds that it is not inherently improbable. The administrative law judge finds the weight of evidence to be established in favor of the claimant and concludes that the claimant was separated by the employer for no disqualifying reason.

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification if the employer is unwilling to furnish available evidence to corroborate the allegation misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

For the above-stated reasons the administrative law judge concludes that the claimant's separation from employment took place for no disqualifying reason. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 23, 2012, reference 01, is affirmed. The claimant voluntarily quit his employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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