

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R POTTER
Claimant

APPEAL NO. 15A-UI-01884-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GODBERSEN-SMITH CONSTRUCTION CO
Employer

OC: 03/16/14
Claimant: Respondent (5)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 9, 2015 (reference 03) decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged; based on an Agency conclusion that the claimant had involuntarily separated from the employment for no disqualifying reason. After due notice was issued, a hearing was held on March 12, 2015. Claimant John Potter did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Karen Gunderson, Payroll Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal No. 15A-UI-01879-JTT, concerning claimant Clinton Potter. The administrative law judge took official notice of the Agency's administrative record concerning benefits disbursed to John Potter. The administrative law judge took official notice of the fact-finding materials pertaining to John Potter for the limited purpose of documenting the employer's participation in the fact-finding interview. The administrative law judge took official notice of the Agency's administrative record concerning benefits disbursed to Clinton Potter, which record indicates that no benefits were disbursed to Clinton Potter.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Potter was employed by Godbersen-Smith Construction Company as a full-time equipment operator during two distinct periods of employment. The most recent period of employment began in April 2014. On December 12, 2014 the employer laid off John Potter for the winter with the intention of recalling John Potter in the spring. John Potter's son, Clinton Potter, also worked for the employer as a full-time laborer and was laid off effective December 19, 2014. On January 24, 2015 John Potter notified the employer that he and Clinton Potter would not be returning to the employment because they had accepted other employment and needed to participate in a crane operating class that was to start on February 23, 2015. At the time John Potter gave notice that he and his son would not be returning to the employment, the employer had not recalled either to the employment.

John Potter established an additional claim for benefits that was effective December 21, 2014 and received benefits for the period of December 21, 2014 through January 17, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113)(a) provides as follows:

24.1(113) 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.

Because a layoff involves neither misconduct nor a voluntary quit, a layoff does not disqualify a claimant for unemployment insurance benefits and does not relieve an employer of liability for benefits. Contrast Iowa Code section 96.5(1) (concerning voluntary quits) and 96.5(2)(a) (concerning discharges for misconduct). The claimant's separation from the employment occurred in December 2014, when the employer laid off the claimant. The layoff would not disqualify the claimant for benefits or relieve the employer of liability for benefits. The claimant's decision, during the period of layoff, not to return to the employment does not alter the nature of the separation and would not disqualify the claimant for benefits or relieve the employer of liability for benefits. The claimant separated from the employment for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

The administrative law judge notes that John Potter discontinued his claim for unemployment insurance benefits after the week that ended January 17, 2015.

DECISION:

The February 9, 2015 (reference 03) decision is modified as follows. The claimant was laid off effective December 12, 2014. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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