

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JOSHUA L ANDERSON
Claimant

TLH CLEANING LLC
Employer

APPEAL NO. 22A-UI-15488-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/03/22
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Layoff

STATEMENT OF THE CASE:

On July 21, 2022, the employer filed a timely appeal from the July 15, 2022 (reference 02) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was laid off on June 30, 2022 due to a lack of work. After due notice was issued, a hearing was held on September 1, 2022. Joshua Anderson (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Ted Hammes represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects not benefits have been paid to the claimant in connection with the claim. Exhibit 1, the appeal letters, was into evidence. The administrative law judge took official notice of the Verification of Business Closing document. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-15487-JT-T.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Ted Hammes is President and owner of TLH Cleaning, L.L.C. TLH Cleaning, L.L.C. is but one of three businesses Mr. Hammes owns. All three businesses have contracts with the Iowa Department of Transportation to provide janitorial services at Iowa highway and Interstate rest stops. During the claimant's employment, TLH had contracts to clean and provide snow removal at three rest stops: south of Victor at mile marker 208, I-80 near Adair, and I-35 south of Story City. The Adair and Story City facilities were about 100 miles from the Victor location.

Joshua Anderson (claimant) was employed by TLH Cleaning, L.L.C. as a full-time Rest Area Attendant from September 2021 until June 30, 2022, when employer laid him off. The claimant was assigned to the Adair location. The work hours were 5:00 a.m. to 1:00 p.m. and

occasionally from 1:00 p.m. to 9:00 p.m. The claimant was scheduled to work four or five days a week. The claimant's wage was \$13.00 an hour.

The rest area location contracts with IDOT were subject to a bidding process every four or five years. TLH's contract pertaining to the Victor location terminated effective June 30, 2022. A different contractor was awarded the contract for the Victor location for the period beginning July 1, 2022. The new contract holder did not offer the claimant work at the Victor location. Mr. Hammes had directed the claimant's supervisor to mention the possibility of work at the Adair or Story City locations, but Mr. Hammes does not believe the supervisor had such discussion with the claimant. The employer concedes it would likely not have been feasible for the claimant to commute the 100 miles distance to those other locations.

Though TLH no longer serves the Victor location, it continues to serve the Adair and Story City facilities.

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.

In contrast to a discharge for misconduct in connection with the employment or a voluntary quit without good cause attributable to the employer, a layoff does not disqualify the claimant for benefits or relieve AN employer's account of liability for benefits. See Iowa Code section 96.5(1) (regarding voluntary quits) and 96.5(2)(a) (regarding discharges).

The claimant was laid off effective June 30, 2022 in connection with the employer's loss of the IDOT contract pertaining to the Victor rest area. Effective June 30, 2022, the employer no longer had work for the claimant at the Victor location. The employer did not off work at the Adair or Story City location and the claimant would not have been obligated to accept work at one of those locations due to the substantial commuting distance. See Iowa Admin. Code rule 871 24.26(1) (regarding changes in the contract of hire). The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The July 15, 2022 (reference 02) decision is AFFIRMED. The claimant was laid off effective June 30, 2022. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

October 4, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.