

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REX A RHINER
Claimant

APPEAL NO. 13A-UI-00258-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VALLEY PLUMBING INC
RHINERS PLUMBING COMPANY INC**
Employer

**OC: 02/05/12
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

Valley Plumbing (employer) appealed a representative's December 31, 2013 decision (reference 01) that concluded Rex Rhiner (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 3, 2013. The claimant participated personally. The employer was represented by Kathryn Barnhill, Attorney at Law, and participated by Dan Geneser, Department Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 rehired on March 14, 2012, as a full-time plumbers' helper. The claimant was laid off for lack of work on November 12, 2012. Later the employer discovered the claimant was had his own business, Affordable Plumbing By Wayne Rhiner Sons, that was competing with the employer. The claimant started the business in 2009. The employer did not rehire the claimant because he found out about the business.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was laid off for 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 on November 12, 2012. When an employer suspends a claimant from work status for a period of time, 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 for that period.

The issue of whether the claimant is eligible to receive unemployment insurance benefits while he is self employed is remanded for determination.

DECISION:

The representative's December 31, 2012 decision (reference 01) is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is eligible to receive unemployment insurance benefits while he is self employed is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css