

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE J ZAPUTIL

Claimant

APPEAL NO: 14A-UI-00633-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOINER CONSTRUCTION COMPANY INC

Employer

OC: 02/03/13

Claimant: Appellant (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
871 IAC 24.1(113)a – Layoff
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jesse J. Zaputil (claimant) appealed a representative's January 8, 2014 decision (OC 02/03/13 – reference 01) that concluded he was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2014. This appeal was consolidated for hearing with one related appeal, 14A-UI-00634-DT. The claimant participated in the hearing. Danielle Joiner appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on October 26, 2010. He worked full time as a local truck driver. His last day of work was July 1, 2013.

On or about July 1 the claimant visited with the employer's business owner and indicated that he needed to take a leave of absence to deal with some anxiety issues; the owner agreed. The claimant subsequently contacted the owner on or about August 28, 2013 and indicated that he had been released by his doctor as able to return to work. The owner responded to the claimant that there was currently not enough work available for the claimant and indicated that

he should go ahead and resume filing for unemployment insurance benefits. The claimant had previously established a claim for benefits effective February 3, 2013. He had not been claiming benefits during the period of July 1 through August 24, but when the owner advised him that there was no work and that he should resume receiving benefits, he reactivated his claim with an additional claim effective the week beginning August 25, 2013.

On or about October 25 the employer contacted the claimant about returning to some work starting on October 28. The claimant was agreeable, but on or about October 28 he sent the employer a text message indicating that he was again ill and would not be able to return to work on that date. The claimant asserted that a few days later he called and left a message for the owner that he was again available for work. It is unclear whether the owner received that message. Within a week or two, however, the employer determined that the claimant was not returning to work and the employer proceeded to hire one or more replacement drivers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he voluntarily quit by not returning to work. However, he did seek to return to work on or about August 28, 2013.

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.

A separation occurred when the employer did not return the claimant to work on or about August 28, 2013. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rather, the separation between the claimant and the employer was a layoff by the employer due to the lack of work in August 2013; the employer had no work it could provide to the claimant at that time. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively

seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

The claimant has demonstrated that at least from August 25, 2013 through October 25, 2013 he was able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether the claimant refused a suitable offer of work on or about October 28, 2013 arose during the hearing. Tied to that issue is whether the claimant was able and available for work as of that time, and if not, for what period of time he might not have been able and available for work. As the claimant's availability for work is a factor which may affect any review of whether he might be disqualified for declining an offer of work, the administrative law judge declines to address his availability after October 25. These issues related to the claimant's status in October were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's January 8, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did effectively layoff the claimant. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The claimant was able and available for work as of August 25, 2013. The matter is remanded to the Claims Section for investigation and determination of the October refusal and able and available issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs