

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR J MASON
Claimant

APPEAL NO. 13A-UI-06506-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIRKWOOD COMMUNITY
COLLEGE – AREA 1**
Employer

OC: 05/05/13
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 24, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 17, 2013. The claimant did participate. The employer did participate through Sherri Hlavacek, Human Resources Specialist. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he laid off due to lack of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a workforce career consultant through August 31, 2012, when he was told that he was going to be laid off due to lack of work. He was also told at that time that if he chose to take voluntary retirement, he would be paid an incentive. No matter whether the claimant "chose" to retire or not, the claimant was going to be laid off due to lack of work. Under such circumstances the claimant did not choose to retire, he made the best of a bad situation by taking the incentive package knowing he would be laid off due to lack of work in any event.

Kirkwood Community College is a reimbursable employer and thus, despite the fact that the claimant has requalified for benefits since his separation, their account cannot be relieved of charges.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 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 claimant was told he was going to be laid off whether he accepted the retirement incentive or not. Under such circumstances the administrative law judge cannot find that the claimant voluntarily quit his work to retire. He was forced into the retirement, knowing his employment would end no matter what choice he made. The claimant's employment ended due to lack of work. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

Since this employer is a "reimbursable" employer, their account cannot be relieved of charges despite the fact that the claimant has requalified for benefits since his separation.

DECISION:

The May 24, 2013 (reference 01) decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css