

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARYL T PLAIN

Claimant

APPEAL NO. 10A-UI-01016-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JEFF HABHAB CONSTRUCTION INC

Employer

OC: 12/06/09

Claimant: Appellant (2-R)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Daryl Plain filed a timely appeal from the January 15, 2010, reference 02, decision that denied benefits based on an Agency conclusion that he had voluntarily quit the employment without good cause attributable to the employer. After due notice was issued, a hearing was held on February 25, 2010. Mr. Plain participated and presented additional testimony through Dave Haggard. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether the claimant was discharged for misconduct, voluntarily quit for good cause attributable to the employer, or was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Daryl Plain was employed by Jeff Habhab Construction, Inc., as a full-time concrete construction laborer and last performed work for the employer in December 2008. On or about December 8, 2008, Mr. Habhab sent another employee to notify Mr. Plain that he was laid off and should file for unemployment insurance benefits. Two other employees were laid off at the same time. Prior to notice of the lay-off, the number of work hours available to Mr. Plain had been reduced by more than half. After the employer laid off Mr. Plain, he recalled Mr. Plain for a two-day project that ended on or about December 19, 2008. The employer had no further work for Mr. Plain and had no further contact with Mr. Plain.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) 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 labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence indicates that Mr. Plain was laid off effective December 8, 2008, was recalled for a two-day project on or about December 19, 2008, and was again laid off at that time. The lay-off would not disqualify Mr. Plain for unemployment insurance benefits. Mr. Plain is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

Workforce Development records suggest that Mr. Plain has not worked for any employer since December 2008. While this may be attributable to the state of the construction industry, it also raises the question of whether Mr. Plain has been able and available for work. This matter will be remanded to the Claims Division for determination of those issues.

DECISION:

The Agency representative's January 15, 2010, reference 02, decision is reversed. The claimant was laid off effective December 8, 2008. The claimant is eligible for benefits, provided he is otherwise eligible.

This matter is remanded for determination of whether the claimant is able and available for work.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs