

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JORDAN D ARCHER
Claimant

APPEAL NO. 18A-UI-02776-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN ENTERPRISES LLC
Employer

OC: 01/28/18
Claimant: Respondent (5R)

Iowa Administrative Code 871-24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 20, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant had been discharged on January 31, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on March 27, 2018. Claimant Jordan Archer participated and presented additional testimony through Ben Maur. Gary Fritz represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 15 and Department Exhibit D-1 into evidence.

ISSUE:

Whether the claimant separated from the Golden Enterprises, L.L.C. for a reason that disqualifies him for unemployment insurance benefits or that relieves that employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The named employer in interest is Golden Enterprises, L.L.C., employer account number 143440. Jordan Archer was employed by Golden Enterprises, d/b/a American Car Wash Industries, as a full-time car wash installer from December 4, 2017 until some point on or before January 29, 2018, when he involuntarily separated from Golden Enterprises, d/b/a American Car Wash Industries, pursuant to that employer's sale of the business enterprise to a company doing business as Harrell's Car Wash Systems.

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 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)(i) provides as follows:

Causes for disqualification. 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. But the individual shall not be disqualified if the department finds that:

- i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer representative presented less than clear evidence regarding what specific business entity was Mr. Archer's actual employer at specific times as those matters relate to unemployment insurance liability and eligibility purposes. The weight of the evidence establishes an involuntary separation from the named employer in interest, Golden Enterprises, d/b/a American Car Wash Industries, on or before January 29, 2018. The weight of the evidence establishes that the separation at that time was in the form of a layoff, since Golden Enterprises, d/b/a American Car Wash Industries, had no additional work for Mr. Archer at that time and the separation at that time was not based on misconduct. A layoff would not disqualify Mr. Archer for unemployment insurance benefits or relieve the named employer in interest of liability for benefits. Contrast Iowa Code section 96.5(1) (regarding voluntary quits) and Iowa Code section 96.5(2)(a) (regarding discharges for misconduct). Based on the separation that occurred on or before January 29, 2018, Mr. Archer is eligible for benefits, provided he meets all other eligibility requirements. Based on that separation, the employer account of the named employer in interest, Golden Enterprises, L.L.C., employer account number 143440, may be assessed for benefits.

The relationship between Golden Enterprises, d/b/a American Car Wash Industries, and the purported new employer, Harrell's Care Wash Systems, including the transfer of the business enterprise, needs to be further investigated by Iowa Workforce Development so that the Agency can determine whether Harrell's Care Wash Systems is a successor employer to Golden

Enterprises for unemployment insurance liability purposes. In addition, an initial adjudication of Mr. Archer's January 31, 2018 separation from Harrell's Car Wash Systems, which adjudication must include proper notice to that specific employer, needs to occur. This matter will be remanded to the Benefits Bureau and to the Tax Bureau at Iowa Workforce Development to address the issues referenced in this paragraph.

DECISION:

The February 20, 2018, reference 01, decision is modified as follows. The claimant was laid off on or before January 29, 2018, pursuant to the employer's sale of the business entity. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer account of the named employer in interest, Golden Enterprises, L.L.C., employer account number 143440, may be assessed for benefits.

This matter is remanded to the Benefits Bureau for adjudication of the January 31, 2018, separation from Harrell's Car Wash Systems. That adjudicative process must include notice to the employer, Harrell's Car Wash Systems.

This matter is remanded to the Tax Bureau for determination of the relationship between Golden Enterprises, L.L.C., employer account number 143440, and Harrell's Car Wash Systems, including determination of whether Harrell's Car Wash Systems is a successor employer to Golden Enterprises, L.L.C. for unemployment insurance liability purposes.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs