

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARRY A SHILLING
Claimant

APPEAL NO. 08A-UI-03800-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANDERSON CONSTRUCTION SERVICES
LLC**
Employer

OC: 02/24/08 R: 02
Claimant: Respondent (5)

871 IAC 24.1(113)(a) - Layoff

STATEMENT OF THE CASE:

Anderson Construction Services filed a timely appeal from the April 8, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 5, 2008. Claimant Harry Shilling participated. John Anderson, Owner represented the employer and presented additional testimony through carpenter Mike Endersbe. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant's separation from employment was in the form of a discharge or a layoff. The administrative law judge concludes the claimant was temporarily laid off and subsequently discharged from the employment.

Whether the claimant's involuntary separation from the employment disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Harry Shilling commenced his full-time employment with Anderson Construction Services at the beginning of 2007. Mr. Shilling worked as a carpenter. John Anderson, owner, was Mr. Shilling's immediate supervisor. At some point in early February 2008, the employer ceased assigning work to Mr. Shilling. Mr. Shilling contacted the employer over the course of four weeks and, each time, the employer told Mr. Shilling that no work was available.

After multiple weeks without work or wages, Mr. Shilling established a claim for unemployment insurance benefits that was effective February 24, 2008.

On March 4, 2008, Mr. Anderson summoned Mr. Shilling to the workplace and discharged him from the employment. The final incident that prompted the discharge came to the attention of Mr. Anderson within a week of the discharge, when Mr. Anderson went to a construction job site and saw that Mr. Shilling had used an untreated piece of wood as a center stair runner, or

support, on a deck project. The untreated lumber would eventually rot and fail. Mr. Shilling knew he was not supposed to use untreated lumber on a deck project, but told a newer carpenter, Mike Endersbe, that it would be okay to use the untreated board. Mr. Shilling had Mr. Anderson's cell phone number and could have called Mr. Anderson to request more lumber for the project. Mr. Shilling and Mr. Endersbe had worked on the project on January 7. Mr. Shilling was the more experienced carpenter. Mr. Shilling never mentioned to the employer that he had used an untreated board.

On March 4, Mr. Anderson summoned Mr. Shilling to a meeting and told Mr. Shilling that he did not have any work for him because he could not be relied upon to perform his work without being supervised. Mr. Shilling understood at the end of the conversation that he was being discharged from the employment.

The final incident followed several prior incidents wherein Mr. Shilling failed to follow instructions and/or performed his duties in a negligent or careless manner. In July 2007, Mr. Shilling left a power saw out in the rain when he left a jobsite for the day. In July 2007, Mr. Shilling failed to follow directions Mr. Anderson had provided for building a shower wall. Mr. Shilling constructed the wall incorrectly and the wall had to be reconstructed. In August 2007, Mr. Shilling stepped on the lid of a client's washing machine while installing drywall and dented the lid. Also in August 2007, Mr. Shilling failed to follow Mr. Anderson's instructions to brace a wall he was constructing to make certain that the wall was plumb and square. Mr. Anderson had to repair the wall. In October 2007, Mr. Anderson attempted to bill a customer for a deck project only to find out from the customer that Mr. Shilling had not completed the work. In May 2007, Mr. Shilling had failed follow instructions in installing floor tile. In another incident involving a siding project, Mr. Shilling failed to follow the employer's instructions that he clean the job site as he moved from one area to another.

The first week of the claim for unemployment insurance benefits predated the March 4 discharge. Since the effective discharge date, Mr. Shilling has received benefits totaling \$2,544.00.

REASONING AND CONCLUSIONS OF LAW:

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 laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations. 871 IAC 24.1(113)(a). 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. 871 IAC 24.1(113)(c).

The weight of the evidence in the record indicates that the separation from employment occurred in early February when the employer ceased assigning work to Mr. Shilling. The separation was in the form of a temporary layoff because Mr. Anderson had placed Mr. Shilling in an unpaid status.

The subsequent discharge on March 4, 2008 occurred a few weeks after the actual separation and merely turned the layoff from temporary to permanent.

Because the separation itself was based on a layoff, not a discharge, the administrative law judge need not further consider the subsequent discharge as it would not disqualify Mr. Shilling for unemployment insurance benefits. See Iowa Code section 96.5(1) and 96.5(2)(a).

DECISION:

The Agency representative's April 8, 2008, reference 01, decision is modified as follows. The claimant was laid off at the beginning of February 2008. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs