

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A HILL
Claimant

APPEAL NO. 12A-UI-02592-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSKALOOSA GRAIN LTD
Employer

OC: 01-29-12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2012. The claimant did participate. The employer did participate through Daryl Vandegest, Owner.

ISSUE:

Was the claimant laid off due to lack of work or did the claimant voluntarily quit his employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver full time beginning in July 2009 through January 6, 2012 when he was laid off due to lack of work. On the night of January 5 the truck the claimant was driving burned to the ground destroying it completely. After the fire there was no other truck for him to drive. The owner of the truck Virgil had to wait for the insurance check in order to purchase a new truck. The claimant waited and did not file a claim for unemployment insurance benefits until the week of January 29, 2012. During the period while he was waiting for the insurance check, Virgil approached the claimant and his wife about becoming part owners of the truck. Prior to this time the claimant had not been an owner of the truck, but only an employee as a driver. The claimant and his wife decided not to purchase part of the truck and then on January 29 Virgil decided not to replace the truck at all leaving the claimant with no work. Since Virgil was not replacing the truck the claimant then began looking for other work which he has since obtained. The claimant was not obligated to contribute to the purchase of the truck or to become a part owner of the truck in order to keep his employment.

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.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The employer simply had no more work for the claimant after the truck he was driving was destroyed by a fire. The claimant was not required to go into business or to become an owner in order to keep working. Such a requirement is a substantial change in his contract of hire and gives good cause attributable to the employer for the claimant voluntarily quitting his employment. The claimant's separation from work is correctly characterized as a lack of work by the employer. Benefits are allowed.

DECISION:

The March 12, 2012 (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