

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHARLES B SHELMON
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H & H INSTALLERS
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Appeal Number: 04A-UI-06513-SWT
OC: 05/09/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
871 IAC 24.1(113)a - Layoff

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 8, 2004, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 22, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Pete Holmbo participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from January 14, 2004 to April 23, 2004. The claimant's supervisor was the foreman, Terry Hassle.

The claimant completed a project in Columbia, Illinois, and traveled with Terry Hassle to East Moline, Illinois, on April 23, 2004 to do some rework on a job that the employer had done previously. The claimant resided in Davenport, Iowa, at the time and Hassle had told him that he would get some time off at home after the job in East Moline was done. After checking into the motel, Hassle, the claimant, and Chris met to discuss the employer's upcoming work. The claimant had been asked to travel to a job in Japan if the employer won the bid on the job. He was told that he would need a passport to work on the job, but he was unsuccessful in getting the passport because he had a warrant out for him due to unpaid fines. He had shared this information with Hassle. During the meeting on April 23, Hassle told the claimant that the job in East Moline would only take a couple of hours and it was not necessary for him to be there. He told the claimant that the employer planned to have someone else go with Hassle to Japan and the employer had no other work lined up at that time for him. Hassle told the claimant that he would call the claimant when he got back after the Japan trip about future work.

The claimant reasonably believed that he was not required to work on the East Moline job and was being laid off temporarily until the employer recalled him to work. He checked out of the motel and went home. Hassle completed the East Moline job and did not have any work until a job in Bartlesville, Oklahoma, which lasted from May 8 to May 20. The employer did not win the bid on that job until May 4. Hassle never mentioned this project when he spoke to the claimant, and the claimant was never offered the opportunity to work after April 24.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a. On the other hand, 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 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence establishes that the claimant did not quit employment and was not discharged for work-connected misconduct. His separation from employment was a layoff due to lack of work.

DECISION:

The unemployment insurance decision dated June 8, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/tjc