

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN P SHAROIAN
Claimant

APPEAL NO. 11A-UI-01641-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHAMPIONS FITNESS CENTER LLC
Employer

OC: 01/02/11

Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

John P. Sharoian (employer) appealed a representative's February 2, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Champions Fitness Center, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2011. The claimant participated in the hearing. Collin Carney appeared on the employer's behalf. During the hearing, Claimant's Exhibits A, B, and C were entered into evidence. The record was left open through March 21, 2011 for the claimant to seek to submit some new documentation as an exhibit and for the employer to make any objection to admission of any new exhibit; however, the claimant was unable to provide any new potential exhibit. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about January 3, 2006. He was a partner and co-owner, and worked part-time as a fitness class teacher in the employer's gym. His last day of work was on or about December 24, 2010.

The employer had received an offer to purchase the gym and had accepted that offer as of about November 22. The prospective new owner and her boyfriend began to make changes in the gym by the middle of December, including changing the locks on December 6 and telling the claimant that he did not need a copy of the key. Also, after December 24 the claimant was not scheduled to teach any further classes. The claimant understood he no longer had a job and proceeded to make plans to move to another city, particularly after he received an eviction notice to vacate his apartment above the gym; the apartment was not owned directly by the employer, but was owned separately by some of the partners who, with the claimant, were partners in the gym. The claimant then moved out of town and out of state in January. Later in January the sale to the prospective buyer fell through.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

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.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by job abandonment by moving out of town and out of state. The claimant reasonably concluded that his job was ended, and only moved after that was the case. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2.

The separation between the claimant and the employer was a layoff by the employer due to the believed impending sale to the prospective new owner; the employer had no work to provide to the claimant after December 24 for at least an indefinite period of time. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's February 2, 2011 decision (reference 01) is reversed. The claimant did not quit but was laid off from the employer as of December 24, 2010 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw