

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT J EALY
Claimant

APPEAL NO. 10A-UI-10876-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEUMANN BROTHERS INC
Employer

OC: 02/05/12
Claimant: Respondent (5)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2012, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 3, 2012. Claimant Scott Ealy participated. Tami Wingert represented the employer and presented additional testimony through Ron Christensen and Gerald Myers.

ISSUE:

Whether Mr. Ealy separated from the employment for a reason that disqualifies him for unemployment insurance benefits. The administrative law judge concludes that Mr. Ealy was laid off effective August 2, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, Neumann Brothers, Inc., is a construction general contractor. Scott Ealy performed work for the employer during multiple periods. Mr. Ealy most recently returned to the employer on June 4, 2012 after a two-month layoff. All the work Mr. Ealy has performed for the employer has been on projects located in Grinnell. Mr. Ealy has at all relevant times resided in What Cheer. The distance between What Cheer and Grinnell is 43 miles.

Mr. Ealy last performed work for the employer on August 3, 2012. Prior to that, Ron Christon, Job Superintendent at Grinnell, had told Mr. Ealy there would be no more work in Grinnell after August 3, 2012.

Mr. Ealy is a union carpenter. When Mr. Ealy started with the employer he was attached to the Iowa City union local. At the employer's request, Mr. Ealy transferred his union affiliation to the Des Moines local. He did so pursuant to an agreement with Neumann Brothers, Inc. that he would not be asked to work further west than Grinnell. The distance from What Cheer to Des Moines is 90 miles, about double the distance from What Cheer to Grinnell. The distance from Grinnell to Iowa City is 67 miles.

On August 2, 2012, Mr. Ealy told Mr. Christen that he intended to seek employment on a water treatment plant construction project in Iowa City. The employer had not and did not discuss with Mr. Ealy the idea of assigning him to other projects with the employer. Mr. Ealy had not accepted other employment at the time he separated from Neumann Brothers. Mr. Ealy was able to secure four days work at the Iowa City water treatment plant in early September 2012.

REASONING AND CONCLUSIONS OF LAW:

Iowa Workforce Development rule 871 IAC 24.1(113) provides as follows:

24.1(113) 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.

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 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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The weight of the evidence in the record establishes that Mr. Ealy was laid off effective August 3, 2012, when he had performed all the work the employer had available for him on the employer's Grinnell projects. The employer did not offer Mr. Ealy any additional work beyond

August 3, 2012. The layoff would not disqualify Mr. Ealy for unemployment insurance benefits. Mr. Ealy is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's August 29, 2012, reference 02, decision is modified as follows. The claimant was laid off effective August 3, 2012. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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