

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB A MCFARLAND
Claimant

APPEAL NO. 12A-UI-12123-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWO RIVERS GROUP INC
Employer

OC: 08/28/11
Claimant: Appellant (2-R)

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Jacob McFarland filed a timely appeal from the October 8, 2012, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on November 1, 2012. Mr. McFarland participated. Art Jones, President, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 12A-UI-12124-JTT. Exhibit A was received into the record.

ISSUE:

Whether Mr. McFarland separated from the employment for reason that would disqualify him for unemployment insurance benefits. The administrative law judge concludes that the employer laid off Mr. McFarland effective August 14, 2012.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is an HVAC contractor. Jacob McFarland was employed by Two Rivers Group, Inc., as a full-time HVAC installer and designer from June 6, 2012 and last performed work for the employer on August 10, 2012. Art Jones, President and owner, was Mr. McFarland's immediate supervisor. Julia Jones assisted with operating the business and approved Mr. McFarland's request for time off for a family vacation August 13-17, 2012.

For most of the employment, the employer had Mr. McFarland working on two school projects in Perry. The work was still ongoing at the time Mr. McFarland worked his last day on August 10, 2012. The employer planned to layoff some employees effective August 14, 2012 because the work on the projects had progressed to the point where the employer did not need as many workers. Though Mr. McFarland possessed HVAC design skills that other workers did not, the design duties were done by August 10, 2012. The employer led Mr. McFarland to believe that he would be amongst those laid off effective August 14, 2012, during the week he had been approved for vacation.

On July 7, 2012, Mr. McFarland had been in a motor cycle accident. Mr. McFarland was absent from work on July 9 and 10, but returned to work thereafter.

On Wednesday, August 1, 2012, Mr. McFarland broke a toe in a non-work-related accident. Mr. McFarland was absent from work on Thursday and Friday, August 2 and 3, but returned to work on Monday, August 6, 2012. Mr. McFarland returned to work in an orthopedic walking boot. Mr. McFarland moved more slowly in the walking boot, but was still able to perform most if not all of his assigned duties. During the last week of the employment, Mr. McFarland sometimes used a wheelchair belonging to the school to move about the school more quickly. At that point, Mr. McFarland was for the most part supervising other HVAC installers. Mr. Jones was not pleased that Mr. McFarland had injured his foot, or with the use of the wheelchair, but Mr. Jones did not say anything to Mr. McFarland about it. Mr. McFarland's injury factored in the employer's decision not to have Mr. McFarland work beyond August 10, 2012.

On August 10, 2012, Mr. McFarland completed what he believed was his last day of employment prior to the scheduled layoff. Mr. Jones thanked him for his work. Mr. McFarland collected his tools and left the workplace. Mr. Jones then reopened a claim for unemployment insurance benefits during the week that ended August 11, 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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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. McFarland reasonably concluded that he was to be laid off along with other employees effective August 14, 2012. Mr. McFarland did not voluntarily quit the employment. Mr. McFarland at no point told the employer that he intended to voluntarily quit the employment. The employer at no point told Mr. McFarland that there would be work for him beyond August 14, 2012. The administrative law judge concludes that the employer laid off Mr. McFarland effective August 14, 2012. Mr. McFarland is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether Mr. McFarland has been able to work and available for work since August 5, 2012, the effective reopened claim date.

DECISION:

The Agency representative's October 8, 2012, reference 07, decision is reversed. The claimant was laid off effective August 14, 2012. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Claims Division for determination of whether the claimant has been able to work and available for work since August 5, 2012, the effective reopened claim date.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs