

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRIS L WITTE**  
Claimant

**J L CHITTY GARBAGE SERVICE INC**  
Employer

**APPEAL 19A-UI-00757-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19**  
**Claimant: Respondent (1R)**

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Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 25, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was due to willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on February 8, 2019. The claimant, Chris Witte, participated. The employer, J. L. Chitty Garbage Service, Inc., participated through Patrick Chitty, Former Owner. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant laid off due to a lack of work?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a helper, from May 2, 2016, until December 31, 2018, when he was laid off due to a lack of work. As of January 1, the employer sold all of its assets to Waste Connections. There was no continued work available for claimant with the employer after December 31, 2018.

During the hearing, claimant testified that he does not have a vehicle or a license.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,596.00, since filing a claim with an effective date of January 6, 2019, for the four weeks ending February 2, 2019. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible.

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 Admin. Code r. 871-24.1(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.

Iowa Code section 96.5(1)i 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. But the individual shall not be disqualified if the department finds that:

*i.* The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3...

In this case, the testimony establishes that claimant was laid off due to a lack of work effective December 31, 2018. The employer sold the entirety of its assets to another company effective January 1, 2019, and therefore it had no continued work available for claimant. The administrative law judge finds claimant was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible. As claimant's separation from employment is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

It is unclear whether claimant is available for work, given his lack of transportation. This matter will be remanded for further investigation of that issue.

**DECISION:**

The January 25, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

**REMAND:**

The issue of whether claimant is currently available for work is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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