

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB D STEWART**  
Claimant

**APPEAL NO. 10A-UI-08073-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ATLANTIC LOCKER LC**  
Employer

**OC: 04/25/10**  
**Claimant: Appellant (2)**

871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

Jacob Stewart filed a timely appeal from the June 2, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 30, 2010. Mr. Stewart participated personally and was represented by law intern Rebecca Kulaga and attorney Michael Tulis. Attorney Andrew Knuth represented the employer and presented testimony through Dale Hauptert, owner. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the Agency's administrative DBRO record that includes information regarding wages reported by the claimant and benefits disbursed to the claimant. The administrative law judge took official notice of the Agency's administrative Wage-A document that provides a history of Mr. Stewart's quarterly wages as reported by his employers.

**ISSUE:**

Whether Mr. Stewart separated from the employer for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Jacob Stewart established a claim for unemployment insurance benefits that was effective April 25, 2010 in response to his April 22, 2010, lay-off from full-time temporary employment at Farm Service Cooperative (FSC), employer account number 298260. Workforce Development administrative records (DBRO), indicate that at the time Mr. Stewart established his claim for benefits, he notified Workforce Development that he had started the employment at FSC on April 1, 2010 and was laid off from FSC on April 22, 2010. Mr. Stewart has earlier worked for FSC during the fourth quarter of 2008 and the first and second quarters of 2009.

On August 24, 2009, Mr. Stewart has started working as a part-time, seasonal laborer at the Atlantic Locker, employer account number 338143. Owner Dale Hauptert and Mr. Hauptert's son, Curt Hauptert, functioned as Mr. Stewart's immediate supervisors throughout the employment. During the last couple years, the younger Mr. Hauptert has been in the process of taking over operations at the Atlantic Locker. For the period of September 2, 2009 through

March 16, 2010, Mr. Stewart averaged about 35 hours per week at the locker. During the second half of March 2010, Mr. Stewart's average weekly hours dropped to 24.75. Curt Hauptert told Mr. Stewart he would need to look for other employment if he desired more work hours. Mr. Stewart did not decline any hours Atlantic Locker had available for him. On March 31, 2010, Curt Hauptert told Mr. Stewart that the locker had no more work for him, but hoped to rehire Mr. Stewart the following winter. In short, Curt Hauptert laid Mr. Stewart off.

Mr. Stewart immediately commenced working full-time hours at FSC in connection with the spring planting season. Mr. Stewart was then laid off from FSC on April 22, 2010.

After Mr. Stewart was laid off from FSC, he contacted Curt Hauptert at Atlantic Locker to inquire about further work. Curt Hauptert agreed to bring Mr. Stewart back to the employment on a part-time, temporary basis to fill in for another employee who was on vacation. During the two-week pay period that ended May 11, 2010, Mr. Stewart worked just 5.75 hours at the locker. During the two-week pay period that ended May 25, 2010, Mr. Stewart worked a total of 16.25 hours. Mr. Stewart did not decline any hours Atlantic Locker had available for him. Atlantic Locker has had no further for Mr. Stewart since May 25, 2010.

#### **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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge notes that the employer failed to present testimony from Curt Hauptert, despite the fact that Curt Hauptert appears to have functioned as Mr. Stewart's immediate and primary supervisor. The administrative law judge concludes that the employer had the ability to present testimony from Curt Hauptert.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). The weight of the evidence indicates that Mr. Stewart reasonably relied upon statements Curt Hauptert made to him during the course of the employment and connection with the layoffs.

The weight of the evidence in the record establishes that Atlantic Locker laid Mr. Stewart off effective March 31, 2010. That lay-off would not disqualify Mr. Stewart for unemployment insurance benefits. Mr. Stewart would be eligible for unemployment insurance benefits effective April 25, 2010, provided he was otherwise eligible. Atlantic Locker's account may be assessed for benefits paid to Mr. Stewart.

The weight of the evidence indicates that Atlantic Locker recalled Mr. Stewart to part-time, seasonal employment in May, used Mr. Stewart's services for just a few days, and then again laid Mr. Stewart off effective May 25, 2010. That lay-off would not disqualify Mr. Stewart for unemployment insurance benefits. Mr. Stewart would remain eligible for unemployment insurance benefits effective April 25, 2010, provided he was otherwise eligible. Again, Atlantic Locker's account may be assessed for benefits paid to Mr. Stewart.

#### **DECISION:**

The Agency representative's June 2, 2010, reference 01, decision is reversed. The claimant was laid off effective March 31, 2010. The claimant was recalled to work a few days in May 2010 and was again laid off May 25, 2010. Effective April 25, 2010, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs