

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATHEW A SMITH
Claimant

APPEAL NO: 15A-UI-00676-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA LLC
Employer

OC: 11/09/14
Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Mathew A. Smith (claimant) appealed a representative's January 7, 2015 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Flagger Pros USA, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on February 10, 2015. The claimant participated in the hearing. Jodi McGonigle appeared on the employer's behalf and presented testimony from one other witness, Victoria Benson. 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 September 10, 2013. He worked a series of job assignments as a flagger for the employer's road construction business clients. His last day of work was October 31, 2014.

The claimant had worked an assignment in Huxley, Iowa from about October 5 through about October 10, 2014. He next worked an assignment outside of Des Moines on October 31, 2014. He only worked about three hours on that assignment, as he was somewhat late due to a flat tire, but all of the persons assigned to that assignment were sent home in the early afternoon because the work was done.

The claimant had a change in his phone number that he believed he had communicated to someone with the employer, but apparently it had not gotten into the employer's records. On about November 3 the employer attempted to call the claimant about an assignment, but could not reach him, as the employer was using the claimant's prior number. The same thing occurred on about November 10.

When the claimant heard nothing further from the employer after October 31, he assumed that he was laid off for the season and established a claim for unemployment insurance benefits effective November 9, 2014. He learned on December 2 that the employer considered him to have voluntarily quit by job abandonment as of November 10 when the employer had not been able to reach him.

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.

Rule 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 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.

Here, the claimant's last work assignment ended on October 31, 2014. The employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed. The claimant was employed on a temporary, job-to-job basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed, in this case, on October 31, 2014. Rule 871 IAC 24.26(19). The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility.

The separation between the claimant and the employer was a layoff by the employer due to the end of the assignment on October 31, 2014; the employer did not have continuing work it could provide to the claimant immediately thereafter, even if it might have had new work come available thereafter. The employer did not effectively recall the claimant after that layoff to any other work that might have subsequently become available. Rule 871 IAC 24.24(1). As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Rule 871 IAC 24.26(19). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 7, 2015 decision (reference 03) is reversed. The claimant was laid off from the employer as of October 31, 2014 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/pjs