IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

TREVOR W NICHOLS Claimant **TIPTON STRUCTURAL FABRICATION INC** Employer	**APPEAL 17A-UI-03531-JCT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 02/26/17** **Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations
Iowa Admin. Code r. 871-24.26(1) – Voluntary Quitting – Change in Contract of Hire
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 March 20, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2017. The claimant participated personally. The employer participated through Sheila Schmidt, human resources manager. Larry Becker, Dave Hemold and Mike Rekemeyer attended but did not testify. Employer exhibits one through three were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:
Did the claimant quit the employment, was he laid off due to a lack of work or was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any 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: The claimant was employed full-time as a welder and was separated from employment on February 28, 2017. The evidence is disputed as to whether he quit or was laid off due to a lack of work.

The claimant was hired to work full-time and since 2015, had consistently worked 40 to 45 hours, up to 60 hours consistently each week. After 40 hours of work, the claimant received time and a half pay. In January 2017, the employer's business operations slowed down and employees were reduced to a 32 work week with no overtime. On February 27, 2017, the employer, by way of Larry Becker, called the claimant into the office. The claimant was issued a

$.50 per hour raise. The claimant acknowledged his appreciation for the raise but questioned Mr. Becker about his hours and asked how long the reduced hours would remain. The claimant did not tell Mr. Becker he quit and did not tender a resignation letter, but told him that he would need more hours or else he would be forced to look for another job. The employer interpreted the claimant's comments to mean he quit the employment. The next day, the employer told the claimant his resignation was accepted immediately due to the lack of hours available. The claimant responded that it was "crap" and separation ensued.

The administrative record reflects that claimant has received unemployment benefits in the amount of $3648.00, since filing a claim with an effective date of February 26, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal by way of Sheila Schimdt.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was permanently laid off due to a lack of work.

Iowa Code § 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.
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> a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.*. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge

concludes that the claimant did not quit the employment, but rather, was laid off due to a lack of work. The credible evidence presented is that the employer had reduced hours of employees from working forty hours plus overtime to thirty two hours, with no end date to reduced hours. On February 27, 2017, the claimant was in a meeting with his manager and informed he would receive a $.50 per hour raise. He then questioned the employer about when he would be able to return to full time hours, and noted if hours did not pick up, he would be forced to look elsewhere to support himself.

The administrative law judge is not persuaded those words during a meeting initiated by the employer, were intended as a resignation or even threat of resignation, but rather simply a statement of facts. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The evidence presented does not support the claimant intended to quit on February 27, 2017. The following day, the employer told the claimant he was being laid off due to a lack of work. In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Therefore, the evidence presented supports that the claimant's separation occurred due to a lack of work by the employer. Benefits are allowed.

In the alternative, if the claimant's separation is considered a voluntary quit, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Admin. Code r. 871-24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. Emp't Appeal Bd.*, 433 N.W.2d 700 (Iowa 1988). The claimant was hired and worked at full time of forty hours plus overtime for over a year before the employer reduced hours for employees to meet its business needs. Consequently, the claimant went from 40 hours plus overtime to 32 hours of pay, for an indefinite period. The administrative law judge is persuaded this was a substantial change from the agreement of hire. Since there was no disqualifying basis for the demotion, the quit because of the change in contract of hire was with good cause attributable to the employer and benefits should be allowed. Whether a layoff or quit, benefits are allowed, provided he is otherwise eligible.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges for the employer are moot.

DECISION:

The March 20, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant was permanently laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The claimant has not been overpaid benefits. The employer is not relieved of charges.

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Jennifer L. Beckman
Administrative Law Judge

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Decision Dated and Mailed

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