

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND J EWOLDT
Claimant

APPEAL NO. 09A-UI-05201-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEWBURY MANAGEMENT CO
Employer

OC: 10/12/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.2(113)a – Layoff

STATEMENT OF THE CASE:

Newbury Management Company appealed the March 24, 2009, reference 01, decision that held the claimant was laid off on August 29, 2008 due to lack of work. After due notice was provided, a hearing was held by telephone on April 29, 2009. The claimant participated personally. The employer participated by Ms. Cara Cornelius, District Manager.

ISSUE:

The issue in this matter is whether the claimant was employed and whether the claimant was discharged for misconduct in connection with his employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record finds: The claimant worked for Newbury Management Company as a part-time leasing agent from May 1, 2008 until August 29, 2008 when the claimant was laid off due to lack of work. Mr. Ewoldt's immediate supervisor was Cara Cornelius.

Newbury Management Company took over the leasing and management of Meadow Crest Companies on May 1, 2008 and hired Mr. Ewoldt as a leasing agent at that time. The claimant continued to work under the directive of his immediate supervisor Cara Cornelius for the Newbury Management Company until Newbury Management Company lost the leasing contract on August 29, 2008 and discharged Mr. Ewoldt due to lack of work. After being separated from Newbury Management Company the claimant attempted to secure employment as a leasing agent with the next company who took over the leasing management of the property. Mr. Ewoldt did not initiate the separation and desired to continue work for Newbury Management Company until informed that no further work was available to him effective August 29, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was laid off due to lack of work under nondisqualifying conditions. The evidence in the record clearly establishes that there was an employment relationship between Newbury Management Company and Raymond Ewoldt. The claimant was hired on May 1, 2008 when the company took over management of Meadow Crest Properties and continued to work under the direction and control of Newbury Management Company until August 29, 2008 when the claimant was informed that he was being "laid off" due to lack of work. Newbury Management Company had lost the management contract and no longer had work for Mr. Ewoldt.

It appears that after being laid off from Newbury Management Company the claimant had the option of attempting to continue in a similar position with the company that replaced Newbury Management Company. The evidence in the record establishes that the separation from employment was not initiated by Mr. Ewoldt and that he did not chose to leave employment to accept other work.

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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

Iowa Code section 96.19-18-a provides:

18. "Employment".

a. Except as otherwise provided in this subsection "employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied. Employment also means any service performed prior to January 1, 1978, which was employment as defined in this subsection prior to such date and, subject to the other provisions of this subsection, service performed after December 31, 1977, by: . . .

For the reasons stated herein the administrative law judge concludes that the claimant was separated due to lack of work when no continuing employment was available to Mr. Ewoldt with Newbury Management Company due to lack of work. The administrative law judge concludes that the claimant's separation from this employer took place for no disqualifying reason.

DECISION:

The representative's decision dated March 24, 2009, reference 01, is affirmed. The claimant was laid off under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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