

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID M MCCOY
Claimant

NELSON ELECTRIC COMPANY
Employer

APPEAL 16A-UI-09465-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 26, 2016, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 16, 2016. The claimant participated personally and with Rich Good, union representative. The employer participated through Dave Murray, president. 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.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer or was he laid off due to a lack of work?

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 journeyman electrician and was separated from employment on August 9, 2016.

On the claimant's last day of employment, on August 8, 2016, he had a disagreement with his new foreman, Nick Schafer. Mr. Schafer had only been working with the claimant for three days. During his final shift, the claimant was approached by Mr. Schafer and told to "hurry up". The claimant asked "are you pushing me?" Mr. Schafer said yes, and left the room "flipping off" the claimant. No other profanities were exchanged but the claimant did tell him that Mr. Schafer that he needed a class in management. The claimant felt like Mr. Schafer was harassing him, "riding his butt" and that he was going to have to jeopardize safety to move faster. The claimant went to the union the next day to report Mr. Schafer. The claimant did not state he quit but that he wanted to file a complaint and find a way to work away from him.

On August 9, 2016, the claimant spoke with Dave Murray, president. He was told that he had been laid off from the assignment and could not return. When the union representative,

Mr. Good, also spoke to Mr. Murray, he stated he was frustrated and would just lay off the claimant. The claimant was not confronted with the option to return to the job site or be laid off. The employer believed the claimant could simply not get along with Mr. Schafer and was unaware of the "flipping off", but rather that he quit for refusing to work on site with Mr. Schafer.

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.

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 but was laid off due to a lack of work.

In this case, the claimant attempted to make the employer aware that his foreman, Nick Schafer, had been unprofessional, inasmuch as he told the claimant to hurry and had flipped him off on August 8, 2016. A claimant with work issues or grievances must make some effort to provide notice to the employer to give the employer an opportunity to work out whatever issues

led to the dissatisfaction. Failure to do so precludes the employer from an opportunity to make adjustments which would alleviate the need to quit. *Denvy v. Board of Review*, 567 Pacific 2d 626 (Utah 1977). The claimant's actions were a logical response to the tensions between himself and his new foreman. The administrative law judge is not persuaded the claimant's actions or words were construed to be a voluntary resignation from employment.

Further, the credible evidence presented was that Mr. Murray told both Mr. McCoy and Mr. Good that he would lay off the claimant in response to the complaint, and that he could not return to the assignment. Mr. Murray never presented the claimant (or through the union representative, Rich Good) the option to return to the job site or be laid off permanently. Rather, upon the claimant making the employer aware of his issues with management, the employer initiated the separation. Therefore, the administrative law judge concludes that the based on the evidence presented, the claimant's separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The August 26, 2016, (reference 02) unemployment insurance decision is reversed. The claimant was permanently laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs