

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KHAI J PHOMPONG

Claimant

APPEAL 19A-UI-02177-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLARION PACKAGING LLC

Employer

OC: 02/17/19

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

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 6, 2019, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2019. Claimant did not participate. Employer participated through Human Resource Technician Chelsea Lowe. Official notice was taken of the administrative record.

ISSUES:

Was the claimant laid off due to lack of work?

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: Claimant began working for employer on June 20, 2018. Claimant last worked as a full-time technician. Claimant was separated from employment with Clarion Packaging on December 5, 2018, when the business was sold to Cascades Molded Pulp – Iowa. Claimant did accept employment with the new owner and retained his same title and pay, but no longer worked for Clarion Packaging, as it ceased to exist as a business on December 5, 2018.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 17, 2019, but has not received any benefits to date. The employer did not participate in a fact finding interview regarding the separation on March 5, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 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.

On December 5, 2018 the business where claimant was working, Clarion Packaging, was sold and therefore ceased to exist. As the business no longer existed, claimant could not continue working there. In this case, claimant was separated from employment with this employer through no fault of his own. Although claimant may have immediately been hired by and started working for the acquiring business, he was let go by this employer due to a lack of work. Therefore, the separation (layoff) was attributable to a lack of work by the employer. Benefits are allowed, provided claimant is otherwise eligible. Because of being permanently laid off from work, claimant is obligated to make at least two work searches during each week benefits are claimed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The March 6, 2019, (reference 03) 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 issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs