

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE A GROTEWOLD
Claimant

APPEAL NO: 13A-UI-06431-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BINNS & STEVENS EXPLOSIVES INC
Employer

OC: 04/28/13
Claimant: Respondent (1/R)

Iowa Code § 96.5(2)a – Nondisqualifying Employment Separation

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 23, 2013 determination (reference 01) that held the claimant qualified to receive benefit and the employer's account subject to charge because the claimant's employment was for nondisqualifying reasons. The claimant participated in the hearing with his witness, Kevin Wanders. Heather Steven Vander Berg, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits as of April 28, 2013.

ISSUE:

Was the claimant laid off from work, did he quit or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2011 as an over-the-road driver. The employer's business is typically slow in January, February and March. The claimant's last day of work for the employer was January 15, 2013. The employer knew the claimant needed and was going to have hip surgery on January 16, 2013.

The claimant's physician released the claimant to return to work in early March 2013. The claimant contacted the employer about returning to work in early March. At that time the employer's business was slow and there was no work for the claimant to do. The employer told the claimant he would be called when business picked up and he was needed to work.

The claimant knew the employer had three new employees who were certified to drive. The claimant kept in contact with the employer about returning to work. The employer did not have enough work for the claimant to return to work by early May. The claimant assumed the employer was not going to call him back to work in the near future because the new employees covered his job. In early May the claimant went to the employer's office. The claimant did not

want to be responsible for losing the employer's keys and credit cards. He told the employer that it appeared to him the employer did not have any work for him and gave them their keys and credit card. He indicated that he was going to file a claim for unemployment insurance benefits.

The claimant established a claim for benefits during the week of April 28, 2013. The employer called the claimant on May 29 and asked him to return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a.

The facts establish that the claimant with the employer's approval went on a medical leave of absence from mid-January through early March 2013. When the claimant was released to return to work in early March, he contacted the employer and offered to return. The employer's business was slow and the employer did not have work for him to do then. In early March 2013, the employer laid off the claimant for a lack of work. Even though the claimant turned in his keys and credit card in early May, he did this so he would not lose them and be responsible for replacing them. The claimant did not intend to quit in early May 2013. The claimant wanted to work, but employer still did not have work for him and did not ask him to return to work until May 29, 2013. Since the claimant did not return to work after the employer asked him to, the issue of whether the claimant declined to return to work for reasons that do or do not qualify him to receive benefits will be remanded to the Claims Section to determine.

Since the claimant did not quit and was not discharged for work-connected misconduct as of early March 2013, but was laid off for lack of work, the claimant is qualified to receive benefits as of April 28, 2013.

DECISION:

The representative's May 23, 2013 determination (reference01) is affirmed. The claimant's employment separation in early March 2013 was for nondisqualifying reasons. The claimant was laid off for a lack of work. As of April 28, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

An issue of whether the claimant refused to return to work in late May or early June is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs