

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**HENRY J JONES
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BOX 255
MARQUETTE IA 52158**

**HAROLD JONES – HERMAN JONES
JONES TRANSPORTATION
29337 – 145TH ST
MCGREGOR IA 52157-8600**

**Appeal Number: 04A-UI-01328-L
OC: 01-04-04 R: 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving Layoff

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the February 5, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 16, 2004 in Decorah, Iowa. Claimant did participate. Employer did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time over-the-road and local driver through January 5, 2004 when he quit. Claimant and the employers, Harold and Herman Jones, are brothers. Harlan is another brother who also drove truck for Jones Transportation but neither Henry nor Harlan had an ownership interest in the company. Claimant and Harlan told brothers Harold and Herman that

the DOT regulations would get tougher and they would have to get paid more money to break even and requested an increase from 25 percent of the truck's gross to 30 percent. Herman said, "no, we are going to sell the trucks. Good luck on finding another job." Jones Transportation owned five trucks and all four brothers drove, along with a part-time driver. Employer then sold claimant's truck and attempted to sell Harlan's truck, but the sale fell through because the buyer did not have enough money to go through with the sale. Employer eventually found a driver to drive Harlan's truck and Harold, Herman and the part-time driver are still driving. Claimant never said he quit and knew business was slow because he had not received a Christmas present for the first time in many years. Employer has not purchased a truck to replace claimant's sold truck.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code Section 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.

Because of Herman's statement, the attempted sale of Harlan's truck, and the sale of claimant's truck, the separation was initiated by employer and was because of a slow down in business, either intended or unintended. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The February 5, 2004, reference 02, decision is reversed. Claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

dml/b