

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLY J ACKERSON
Claimant

APPEAL NO: 14A-UI-02171-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUBBERT'S MASONRY INC
Employer

OC: 01/26/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
871 IAC 24.1(113)a – Layoff
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Billy J. Ackerson (claimant) appealed a representative's February 18, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Lubbert's Masonry, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2014. The claimant participated in the hearing. Donald Lubbert appeared on the employer's behalf. During the hearing, Claimant's Exhibits A through D were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Is the claimant able and available for work?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer in about August 2003. He worked full time as a job foreman. His last day of work was May 15, 2013.

The claimant had been on layoff through the winter, through about April 2013. He was just starting back to work in about May 2013, but work was sporadic and there was not enough work for the full crew. The claimant was suffering from some heart problems and his doctor wanted him to only do light-duty work, such as digging. On May 16 the employer told the claimant that it

would be better if the claimant just returned to layoff status, that there was not enough work for everyone yet anyway.

Sometime after May 15, perhaps around July 8, the claimant had a conversation with the employer in which the claimant complained about the fact that he had not gotten a wage increase for several years, and now that the claimant was off work on layoff the employer had given the other employees a wage increase. On or about July 19 the employer and the claimant had a dispute about whether some equipment in the claimant's possession belonged to the employer or to the claimant. Sometime in this time frame the claimant made a comment to the employer which the employer understood as the claimant saying he was quitting. He did not subsequently recall the claimant for work because he considered the employment ended.

The claimant was receiving unemployment insurance benefits through about the September 2013 time frame; the employer did not contest the claimant's eligibility to those benefits at that time because it had considered him on layoff. The claimant had heart surgery on September 23, 2013. He was under doctor's orders to stay off work completely through December 25, 2013; he was released without restriction as of that date. He established a new claim year effective January 26, 2014. The employer protested the claim at that time as it considered that the claimant had voluntarily left the employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant voluntarily quit his employment. The administrative law judge concludes that the employer has failed to satisfy its burden that the separation was caused by a voluntarily quit. Iowa Code § 96.6-2.

871 IAC 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.

The separation occurred on May 15, 2013, not at the later date when the parties had a dispute about the wages and the equipment. The separation between the claimant and the employer was a layoff by the employer; the employer had no work it could provide to the claimant. The

claimant's actions after the separation by layoff did not create a new separation from employment. The employer never recalled the claimant to return to work to test whether the claimant would refuse an offer of recall to work. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

The remaining question is whether the claimant is and was able and available for work in the current benefit year. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. The claimant has been released by his doctor as able to work. A determination by a doctor as to a claimant's ability to work is considered prima facie evidence of the physical ability of the individual to perform the work required. 871 IAC 24.22(1). The claimant is able and available for work as of January 26, 2014.

DECISION:

The representative's February 18, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did lay off the claimant. The claimant is able and available for work as of January 26, 2014. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css