

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY R LEWIS
Claimant

APPEAL NO. 08A-UI-10966-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KLAVAN INC
HANDKE ENTERPRISES**
Employer

**OC: 09/21/08 R: 01
Claimant: Respondent (4)**

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits
Section 96.7-2-a(2) – Charges Against Employer’s Account
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Klavan, Inc. / Handke Enterprises (employer) appealed a representative’s November 17, 2008 decision (reference 02) that concluded Anthony R. Lewis (claimant) was qualified to receive unemployment insurance benefits for a period beginning September 21 due to a temporary separation from work. After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on December 8, 2008. The claimant participated in the hearing. Kathy Harder appeared on the employer’s behalf. The parties waived notice on the additional issue of the subsequent separation from employment. 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.

ISSUES:

Was the claimant employed by the employer for less than his usual hours and wages and eligible for full or partial unemployment insurance benefits?

Is the employer’s account subject to charge for the period of partial unemployment preceding the subsequent separation?

Did the claimant voluntarily quit for a disqualifying reason?

FINDINGS OF FACT:

The claimant started working for the employer on September 2, 2008. He worked full time as general manager of the employer’s general contracting and construction business. After the first week of the claimant’s employment, the business owner left to go to Texas for some training and left the claimant in charge. Reports began coming back to the employer that the claimant was not effectively managing the crew and that some of the crew were threatening to quit, as they had to clear up the problems caused by the other members of the crew. On or about September 21, the business owner advised the claimant to take a week off without pay pending his return so as not to lose the employ of the two workers who had threatened to quit;

another officer of the business would oversee the operations during that week, pending the return of the business owner. As a result, the claimant established a claim for unemployment insurance benefits as of September 21 and made a weekly claim for unemployment insurance benefits for that week.

Upon the owner's return, the claimant returned to work on September 29, although he accepted a demotion into a carpenter position. He continued his employment until October 10, when he offered the employer a two-week notice of resignation because he had accepted another job offer. The employer agreed to waive the two-week notice, and the claimant started in his new employment on October 13. That new employment continued until about November 7.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that a claimant is deemed eligible for partial unemployment insurance benefits if he is not employed at his usual hours and wages and earns less than his weekly benefit amount plus \$15.00 in other employment. Iowa Code §96.19-38-b. While the employer may have had a good business reason for choosing to not have the claimant continue working for the week pending the owner's return, beginning on or about September 21 through September 28, the employer was not providing the claimant with substantially the same employment as it initially provided. Consequently, the claimant is qualified to receive temporary unemployment insurance benefits upon the filing of his claim effective September 21, 2008, provided he was otherwise eligible.

The next issue is whether the employer's account is subject to charge for the benefits paid for the week ending September 27. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2007 and ended March 31, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for a non-disqualifying reason. Iowa Code § 96.5-1. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. However, under these circumstances, the employer's account is also not subject to charge.

The claimant did voluntarily quit in order to accept a bona fide offer of other employment, and did enter into that employment. The claimant is not disqualified from receiving benefits as a result of his October 10, 2008 quit from the employer in this case, but the employer's account will not be charged.

DECISION:

The unemployment insurance decision dated November 17, 2008 (reference 02) is modified in favor of the employer. The claimant is eligible for unemployment insurance benefits for the week ending September 27, 2008, as the employer temporarily did not provide work for him that week. The claimant voluntarily left his employment as of October 10, 2008, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits after his separation from this employment, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw