

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN D ALLON
Claimant

BOVARD STUDIO INC
Employer

APPEAL 17A-UI-01429-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Respondent (5)

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations

STATEMENT OF THE CASE:

The employer filed an appeal from the February 3, 2017 (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was dismissed from work for misconduct and the employer did not furnish sufficient evidence to show misconduct. Subsequently, the department issued the February 20, 2017 (reference 04, amends reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant was dismissed from work and the record did not establish willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 1, 2017. The claimant, John D. Allon, participated. The employer, Bovard Studio, Inc., participated through Francis Bovard, Vice President of Human Capital; and Linn Cornick, President and Chief Operating Officer. Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection.

ISSUE:

Was the claimant laid off due to a lack of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a roving assistant, from November 10, 2015, until November 14, 2016, when his position with the employer ended. Bovard testified that claimant was given notice that his employment would be ending because there was no more work for him. Claimant was hired with the understanding that his employment was temporary, and the employer never intended to employ him on a long-term basis.

Bovard testified that the employer appealed the fact-finding decision primarily because it disputed the statement that claimant was dismissed from work for misconduct. Bovard denies claimant was told that he was being discharged for misconduct. Neither claimant nor the employer discussed any misconduct on the fact-finding interview.

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. Benefits are allowed.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

The parties both took issue with the fact-finding decision insofar as it referred to alleged misconduct by claimant. There is no evidence in the record that indicates the employer discharged claimant due to any misconduct. Rather, the parties agree that claimant completed his position with the employer when all of his work was finished. The administrative law judge finds that claimant's separation was a layoff due to a lack of work. Benefits are allowed. As claimant's separation qualifies him to receive benefits, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The February 20, 2017 (reference 04, amending reference 02) unemployment insurance decision is modified with no change in effect. Claimant was not discharged but was laid off due to a lack of work. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed