

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH R JOHNSTON
Claimant

APPEAL NO: 13A-UI-05544-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALDWELL AND HARTUNG INC
Employer

OC: 04/14/13

Claimant: Respondent (1/R)

871 IAC 24.1(113)a – Layoff

STATEMENT OF THE CASE:

Caldwell and Hartung, Inc. (employer) appealed a representative's May 8, 2013 decision (reference 01) that concluded Kenneth R. Johnston (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 17, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Rose Marquardt appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The claimant started working for the employer on August 9, 2004. He worked part time (9.5 hours per week) as a Saturday night/Sunday morning driver on the employer's contract with a Des Moines, Iowa newspaper. His last shift was the shift that began at about 10:00 p.m. on Saturday, April 13 and ended at about 5:00 a.m. on Sunday, April 14, 2013.

The employer lost the delivery contract with the Des Moines paper in about February 2013; the last day the claimant could have worked for the employer on that schedule was the shift that ended on April 14. The job that the claimant had worked for the employer was eliminated as of that date.

Subsequent to April 14, either at the end of April or in early May, there was some discussion between the employer and the claimant as to whether there might be other work available for the claimant with the employer. There has not been a fact-finding interview or initial determination as to whether there was a bona fide offer of work or a refusal, or whether there was good cause for any refusal.

REASONING AND CONCLUSIONS OF LAW:

A separation is disqualifying if it is a voluntary quit without good cause attributable to the employer or if it is a discharge for work-connected misconduct.

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 between the claimant and the employer was a layoff by the employer due to the loss of the paper delivery contract; as of April 14 the claimant's job was eliminated. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

An issue as to whether there could have been a disqualifying refusal of work after the separation arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's May 8, 2013 decision (reference 01) is affirmed. The claimant was laid off from the employer as of April 14, 2013 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the refusal issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css