

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDREW I SALTZMAN**  
Claimant

**AMES CONSTRUCTION INC**  
Employer

**APPEAL 17A-UI-12510-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/12/17**  
**Claimant: Appellant (2R)**

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Iowa Code § 96.5(4) – Labor Disputes

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 4, 2017, (reference 02) unemployment insurance decision that denied benefits based upon a labor dispute. The parties were properly notified about the hearing. A telephone hearing was held on December 26, 2017. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate.

**ISSUE:**

Is the claimant unemployed as the result of a labor dispute?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed at Ames Construction Inc. and is affiliated with the Laborers' Local 177. There is no evidence of a labor dispute between the company and the union at any relevant time.

The claimant's separation from employment has yet to be decided by the Benefits Bureau of IWD.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed as the result of a labor dispute.

Iowa Code section 96.5(4)a and b provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

4. *Labor disputes.*

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises

at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Iowa Admin. Code r. 871-24.33(1) provides the definition of labor dispute, as follows:

**24.33(1) Definition.** As used in sections 96.5(3)“b”(1) and 96.5(4), the term labor dispute shall mean any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee. An individual shall be disqualified for benefits if unemployment is due to a labor dispute.

Because there is no evidence of a labor dispute between the company and the union, claimant's unemployment is not related to a labor dispute.

**DECISION:**

The December 4, 2017, (reference 02) unemployment insurance decision is reversed. The claimant is not unemployed as the result of a labor dispute. Benefits are allowed effective November 12, 2017, provided he is otherwise eligible.

**REMAND:** The separation issue as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice and appeal rights to both parties.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs