

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

FRANKLIN L DAUGARD SR
501 – 6TH ST
ADAIR IA 50002

A M COHRON & SON INC
62180 GREAT RIVER RD
PO BOX 479
ATLANTIC IA 50022

Appeal Number: 04A-UI-11914-DT
OC: 02/29/04 R: 01
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving – Layoff
Section 96.5-1 – Charges Against Employer's Account

STATEMENT OF THE CASE:

A M Cohron & Son, Inc. (employer) appealed a representative's November 2, 2004 decision (reference 01) that concluded Franklin L. Daugard, Sr. (claimant) was qualified to receive unemployment insurance benefits and that the employer's account might be subject to charge with regard to a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on November 30, 2004. The claimant participated in the hearing. Bea Draper appeared on the employer's behalf. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant started working for the employer in April 2002. He worked full time as a driver at the employer's concrete plant in Atlantic, Iowa. His last day working for the employer was October 31, 2002. Effective November 1, 2002, he automatically became an employee for a new owner and operator of the plant. The employer had sold its three segregable Iowa concrete plants to three different buyers, with all sales becoming effective November 1, 2002. While the employer continued to carry out its bridge building business, there was no further work available for the claimant with the employer after the sale of the Atlantic plant. The claimant did continue to work for the new owner in his same capacity. Due to subsequent temporary layoffs with the acquiring owner, the claimant filed claims for unemployment insurance benefits, resulting in charges being assessed against the employer's based upon base period wages paid by the employer to the claimant. The employer has consistently been challenging those charges. Agency records indicate that there was no transfer of business experience from the employer to the acquiring owner.

REASONING AND CONCLUSIONS OF LAW:

The initial issue in this case is whether the claimant's separation from the employer was disqualifying either as a discharge for misconduct or a voluntary quit without good cause attributable to the employer.

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 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.

After the sale of the employer's Atlantic concrete plant, the employer had no further work available for the claimant. Therefore, the October 31, 2002 separation was attributable to a lack of work by the employer. Benefits are allowed, if the claimant is otherwise eligible.

The second but more significant issue is whether the employer's account is subject to charge for benefits paid to the claimant after the October 31, 2002 separation based on wages paid by the employer to the claimant prior to the separation.

Iowa Code §96.5-1-i provides in part that an individual is eligible for unemployment insurance benefits if:

The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not

received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b".

The employer did transfer a clearly segregable and identifiable part of its business to an acquiring employer who did subsequently employ the claimant. There was no transfer of experience from the employer to the acquiring employer. Therefore, under the terms of the Code provision, the benefits paid to the claimant based upon his wages with this employer, as the transferring employer, are to be charged against the unemployment compensation fund, not against the employer's account.

DECISION:

The representative's November 2, 2004 decision (reference 01) is modified in favor of the employer. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not subject to charge for benefits paid to the claimant based on wages paid prior to November 1, 2002.

ld/pjs