

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHASE J HAYES**  
Claimant

**INNOVATIVE SERVICES INC**  
Employer

**APPEAL 17A-UI-00649-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/04/16**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting – Layoff Due to Lack of Work  
Iowa Admin. Code r. 871-24.1(113) – Definitions – Separations  
Iowa Code § 96.5(1)i – Voluntary Quitting/Business Sale  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 10, 2016, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 9, 2017. The claimant participated personally. The employer participated through Russell Mattson. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct, laid off due to a lack of work or quit without good cause attributable to the employer?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a bedbug and termite remover and was separated from employment on December 2, 2016, when the employer sold the business to Orkin. The evidence is disputed as to whether the claimant could have continued under the new ownership. The claimant stated he was told that he would have to reapply for a position effective December 5, 2016, and the employer had discussed moving him to pest control, which was not the same type of work he was accustomed to for this employer.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$800.00, since filing a claim with an effective date of December 4, 2016. The administrative record also establishes that the employer did not participate in the fact-finding

interview or make a witness with direct knowledge available for rebuttal. Mr. Mattson was unavailable when called, due to the business being in transition.

### **REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant separated due to his job being eliminated when the business was sold on December 2, 2016.

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 (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.

Iowa Code § 96.5-(1)-i provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

i. 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". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the

factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer sold its business to Orkin on December 2, 2016. The claimant did not have continuing work guaranteed, and did not perform work for the successor employer. Rather, the claimant was told he could reapply on December 5, 2016 for a pest control position. There was not work available at Innovative Services Inc. after December 2, 2016, and therefore the claimant was laid off due to a lack of work. Benefits are allowed.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges for the employer are moot.

**DECISION:**

The January 10, 2017 (reference 03) decision is affirmed. The claimant permanently separated due to a lack of work when the employer sold its business. Benefits are allowed, provided he is otherwise eligible. The claimant is not overpaid benefits. The employer is not relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs