

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L MORGAN
Claimant

APPEAL NO. 16A-UI-02870-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BARNHART CRANE AND RIGGING
COMPANY**
Employer

OC: 01/17/16
Claimant: Appellant (2/R)

871 IAC 24.1(113)a – Separations From Employment
Section 96.5-1 – Voluntary Leaving – Layoff

STATEMENT OF THE CASE:

Christopher Morgan (claimant) appealed a representative's February 25, 2016 (reference 01) decision that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Barnhart Crane and Rigging Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 29, 2016. The claimant participated personally. The employer participated by Krista Brown, Human Resources Control Clerk, and Stephen Maples, Site Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 21, 2015; as a full-time temporary iron worker. At the time he was hired the claimant notified the employer he had to take a mandatory driver intervention program on February 5, 6, and 7, 2016 in Ohio. The employer told the claimant he would be released from work to attend the class.

On January 16, 2016, the claimant found out his uncle was very ill and might die from cancer. The claimant asked his site manager if he could go home. The site manager told the claimant the job was almost completed and he could leave. The claimant thought the site manager had laid him off early and filed for unemployment insurance benefits with an effective date of January 17, 2016. The site manager told the claimant to contact the company when he was able to return. The employer would put the claimant back to work if work was available.

The claimant called the employer's human resource department on January 25, 2016 to see if there was work. No work was available. The claimant took his class on February 5, 6, and 7, 2016. He called the employer again on February 8, 2016 but no work was available. The human resource person told the claimant not to bother her too much. The claimant called her once a week for the next two weeks but no work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did voluntarily quit work without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention of leaving work. He only took a week off to see his uncle who was very ill. The separation was not voluntary.

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.

The employer laid the claimant off for lack of work as of January 25, 2016. When an employer suspends a claimant from work status, the separation does not prejudice the claimant. The claimant's separation was attributable to a lack of work by the employer. Benefits are allowed, provided claimant is otherwise eligible.

The issue of whether the claimant is able and available for work after January 17, 2016 is remanded for determination.

DECISION:

The representative's February 25, 2016 (reference 01) decision is reversed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the claimant is able and available for work after January 17, 2016 is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can