

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE L JOHNSON

Claimant

APPEAL NO: 09A-UI-15549-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WE CARE WHEELCHAIR INC

Employer

OC: 03/29/09

Claimant: Appellant (2)

871 IAC 24.1(113)a – Layoff
Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Carrie L. Johnson (claimant) appealed a representative's October 8, 2009 decision (reference 06) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with We Care Wheelchair, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2009. The claimant participated in the hearing. Wendy LaCroix appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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 May 16, 2009. She worked full time as a driver in the employer's service providing transportation services to physically disabled persons. Her last day of work was August 31.

Prior to August 31 the claimant had last worked on August 27; she was scheduled to be off on vacation on August 29. The employer had no work for her on August 30. On August 30 the employer told the claimant she and other employees were going to be laid off for lack of work on August 31. The claimant went in on August 31 and was given a layoff notice.

The employer subsequently asserted that the claimant had been discharged for failing to timely deliver a purchased item to a client. On August 27 the claimant was finishing with a client when the claimant gave her \$39.00 to purchase a carton of cigarettes. The claimant explained she would not have a chance to come back with them until Monday, August 31, and the client

agreed. The claimant promptly reported this to the employer, and the employer's owner/manager to whom she spoke agreed this would be fine.

After the claimant went to the employer's office on August 31 and picked up her layoff notice she intended on driving across town to pick up the cigarettes and deliver them to the client. Before she had a chance to carry this out, the client's nurse had called the employer to inquire how soon the claimant would be there, as there was a medical appointment the client needed to get to. The first owner/manager called the claimant and advised her of the time issue, and the claimant agreed to start over to the client's home, and proceeded to drive across town. Just before stopping and purchasing the cigarettes at a store near the client's home, the claimant called the client and was told that another owner/manager of the employer had already come and delivered a carton of cigarettes; this was about 25 minutes after the claimant got the call that the client would be needing to leave for an appointment. The claimant then called the first owner/manager and inquired what she was to do; she was told not to worry about it, that she was to keep the money and it would be withheld from her final paycheck.

The claimant established an unemployment insurance benefit year effective March 29, 2009. She reopened the claim by filing an additional claim effective August 30, 2009.

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.

There was not an issue regarding the money being taken from the client for purchasing the cigarettes until after the employer had already determined to layoff the claimant; the manufacturing of this new reason for her separation appears to be little more than an attempt on the part of the employer to escape liability for unemployment insurance benefits. Regardless, the employer has not met its burden to show disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

The separation between the claimant and the employer was a layoff by the employer due to a lack of work; the employer had no work it could provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of

the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim.” Iowa Code § 96.19-3. The claimant's base period began October 1, 2007 and ended September 30, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's October 8, 2009 decision (reference 06) is reversed. The claimant was laid off from the employer as of August 31, 2009 due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css