

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TIM HARNISCH**  
Claimant

**TICO INC**  
Employer

**APPEAL NO. 19A-UI-10187-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/01/19**  
**Claimant: Respondent (1)**

Iowa Code Section 96.5(1) & Iowa Admin. Code rule 871-24.1(113) – Layoff

**STATEMENT OF THE CASE:**

The appeal in this matter was filed by the successor employer, Main Street Elgin Investors, L.L.C., and was not filed by the claimant or the named employer in interest, TiCo, Inc. The successor's appeal is from the December 20, 2019, reference 02, decision that allowed benefits to claimant Tim Harnisch, provided he met all other eligibility requirements, and that held the employer account of TiCo, Inc. (employer account number 005666005) could be charged for benefits. Tim Harnisch, who is claimant and President of TiCo, Inc., submitted a request to withdraw the appeal. After due notice was issued to the claimant, the named employer in interest, and the interested party, a hearing was held on January 21, 2020. Mr. Harnisch appeared as the claimant and on behalf of Tico, Inc. Kevin Moore appeared on behalf of the Main Street Eglin Investors, L.L.C. Exhibits 1 and A through D were received into evidence. The administrative law judge took official notice of the successorship determination letters that were mailed to TiCo, Inc. and to Main Street Elgin Investors, L.L.C. on December 10, 2019. The administrative law judge took official notice of the myiowaui.org records for account number 566005. The administrative law judge took official notice of the Iowa Workforce Development record of benefits paid to Mr. Harnisch and the base period wages and wage credits (DBRO).

**ISSUE:**

Whether Mr. Harnisch's request, as President of TiCo, Inc., to withdraw the appeal should be granted.

Whether Mr. Harnisch separated from employment with TiCo, Inc. for a reason that would disqualify him for unemployment insurance benefits or that would relieve the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Until December 1, 2019, TiCo, Inc. owned and operated TiCo Market, a grocery store located at 244 Center Street in Eglin, Iowa. Tim Harnisch was and is President of TiCo, Inc. The business was and is operated as an S-corporation. Mr. Harnisch and his spouse were and are the sole shareholders. In addition to performing his duties as an officer of the corporation, Mr. Harnisch

was employed by TiCo, Inc. as a manager and meat-cutter at the grocery store. TiCo, Inc. made quarterly wage reports to Iowa Workforce Development that included wages the corporation paid to Mr. Harnisch.

Effective December 1, 2019, TiCo, Inc. sold all assets of its business, except the building, to its primary creditor, Main Street Elgin Investors, L.L.C., to satisfy a substantial outstanding debt owed to Main Street Elgin Investors. The agreement was on its face an arms-length transaction. Mr. Harnisch and his spouse could have declined the opportunity to sell the business assets and could have elected to continue operating the grocery store, though the enterprise was losing money and had an outstanding debt to Main Street Elgin Investors that exceeded \$100,000.00. The Asset Purchase Agreement included an agreement by Mr. Harnisch to assist Main Street Elgin Investors with the transition through December 8, 2019. After that time, TiCo, Inc. had no further employment for Mr. Harnisch and Main Street Elgin Investors had no employment for Mr. Harnisch. In connection with the Asset Purchase Agreement, TiCo, Inc. leased the grocery store building to Main Street Elgin Investors, L.L.C. Mr. Harnisch and his spouse have no ownership interest in Main Street Elgin Investors, L.L.C.

Tim Harnisch established an original claim for unemployment insurance benefits that was effective December 1, 2019 and has so far received \$2,460.00 in benefits for the six weeks between December 1, 2019 and January 11, 2020. TiCo, Inc. is the sole base period employer in connection with the claim.

According to Iowa Workforce Development records, Main Street Elgin Investors, L.L.C. (employer account number 00625092) requested a transfer of “experience” from TiCo, Inc. (employer account number 566005) to Main Street Elgin Investors, L.L.C. At the time of the request, TiCo, Inc. had a favorable contribution rate of 0.00 percent. On December 10, 2019, an Iowa Workforce Development representative sent a successorship determination letter to Main Street Elgin Investors, L.L.C. that transferred all of the unemployment insurance “experience” of TiCo, Inc. to Main Street Elgin Investors, L.L.C. The transfer of experience was effective December 1, 2019. Main Street Elgin Investors did not appeal the successorship determination.

## **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge will first address Mr. Harnisch’s request to “withdraw” the appeal filed by Mr. Moore. Iowa Code Section 96.6(2) and (3)(a) provide, in relevant part, as follows:

2. Initial determination. A representative designated by the director shall promptly notify *all interested parties* to the claim of its filing, and *the parties* have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. ... Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant’s last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

### **3. Appeals.**

a. Unless the appeal is withdrawn, an administrative law judge, after affording *the parties* reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the representative. ... *The parties* shall be duly notified of the administrative law judge’s decision, together with the administrative law judge’s reasons for the decision, which is the final decision of the department, unless within fifteen days after the

date of notification or mailing of the decision, further appeal is initiated pursuant to this section.

[Emphasis added.]

Chapter 871 of the Iowa Administrative Code does not limit the term “interested parties” to the claimant and the employer. See Iowa Admin. Code rule 871-24.1(25)(b)(7), which defines a contested claim as follows: “Contested claim. A claim which has been protested by an employer, the department *or an interested party* regarding the claimant’s right to benefits.” [Emphasis added.]

Under the above-referenced statute and administrative rule, the administrative law judge concludes that the successor employer is an “interested party” in connection with the contested case appeal and that it was appropriate for the administrative law judge to proceed with a hearing and enter a decision based on the evidence presented, rather than to dismiss the appeal without hearing evidence. Mr. Harnisch’s request to “withdraw” the appeal is denied.

The administrative law judge will now address Mr. Harnisch’s separation from the manager and meat-cutter employment with TiCo, Inc.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

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.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

The facts underlying the separation in this case are sufficiently similar to those of *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993), to make that decision controlling authority in the present matter. Mr. Bartelt was president and sole stockholder of a failing corporation. *Bartelt*, 494 N.W.2d @ 685. Mr. Bartelt was also a salaried employee of the corporation. *Id.* As president, Mr. Bartelt filed the corporation’s bankruptcy petition. *Id.* The petition for bankruptcy was voluntary, but involuntary bankruptcy was not far off. *Id.* The

corporation's largest supplier and creditor was poised to seize the majority of the corporation's assets. *Id.* Mr. Bartelt subsequently established a claim for unemployment insurance benefits. *Id.* The Supreme Court of Iowa held that Mr. Bartelt's filing of the voluntary petition for bankruptcy as an officer of the corporation did not establish that he had voluntarily quit his employment with the corporation. The court stated as follows:

Whatever else might be asserted against allowing Bartelt the benefits he seeks, it has not been established that he voluntarily quit. Nor, we emphasize, was there any indication that Bartelt manipulated Martin's corporate affairs just to gain unemployment benefits.

In the present case, Mr. Harnisch, as president and as a shareholder in TiCo, Inc. entered into the Asset Purchase Agreement and lease agreement with Main Street Elgin Investor, L.L.C. to avoid an imminent, worse outcome. While the agreement made on behalf of the corporation was on its face voluntary, Mr. Harnisch's separation from his employment with the corporation cannot be characterized as voluntary. At in *Bartelt*, there is nothing to indicate that Mr. Harnisch manipulated TiCo corporate affairs just to gain unemployment benefits.

The evidence in the record establishes a layoff. Once the Asset Purchase Agreement was effective, neither TiCo, Inc. nor Main Street Elgin Investors, L.L.C. had further employment for Mr. Harnisch. Because the separation was a layoff, rather than a discharge for misconduct or a voluntary quit without good cause attributable to the employer, Mr. Harnisch is eligible for benefits, provided he meets all other eligibility requirements. *Contrast* Iowa Code section 96.5(1) (regarding disqualification based on voluntary quit without good cause) and 96.5(2)(a) (regarding disqualification based on discharge for misconduct in connection with the employment). The employer's account may be charged. The named employer in interest is TiCo, Inc. (employer account number 566005). However, under the voluntarily successorship determination sought by Main Street Elgin Investors, L.L.C. (employer account number 00625092) the successor business's account may be charged.

#### **DECISION:**

The December 20, 2019, reference 02, decision is affirmed. The claimant was laid off effective December 1, 2019. The employer account of the successor, Main Street Elgin Investors, L.L.C. (employer account number 00625092), may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn