IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

COLBY W OVERMYER Claimant	**APPEAL NO. 14A-UI-08848-JTT** **ADMINISTRATIVE LAW JUDGE DECISION**
J MYERS TRUCKING LLC Employer	**OC: 07/27/14** **Claimant: Appellant (2)**

871 IAC 24.1(113) – Layoff

STATEMENT OF THE CASE:

Colby Overmyer filed a timely appeal from the August 20, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on September 12, 2014. Mr. Overmyer participated and presented additional testimony through Angie Henderson. Jerry Myers represented the employer and presented additional testimony through Emily Greiner.

ISSUE:

Whether Mr. Overmyer separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: J. Myers Trucking, L.L.C., is a commercial trucking company located in Oskaloosa. The business is owned by Jerry Myers. The business employs about eight drivers. Colby Overmyer was employed as a full-time over-the-road truck driver from April 2013 and last performed work for the employer during the last week of May 2014. At that point, the Federal Motor Carrier Safety Administration (FMCSA) suspended the employer's authority to engage in interstate freight transport. The employer did not regain its authority to engage in interstate freight transport until August 16, 2014. The employer laid off Mr. Overmyer from his commercial truck driving duties at the end of May 2014. The employer has never recalled Mr. Overmyer to the employment. The employer has had no work for Mr. Overmyer since the layoff. The employer did not offer Mr. Overmyer alternative work in the employer's shop. Mr. Overmyer lives more than 40 miles from the employer's shop. Mr. Overmyer's truck driving duties did not require a regular commute to the employer's shop, but work in the employer's shop would have required such a commute at Mr. Overmyer's expense. Mr. Overmyer has ongoing health issues that require monthly doctor appointments, but these have not prevented him from being available for his regular duties with the employer. Mr. Overmyer had a medical appointment set for June 2, but it was the layoff, not the medical appointment, that took him off work at that time. Mr. Overmyer's driving privileges were briefly suspended in June 2014 due to a non-work-related driving infraction and non-payment of the fine. The suspension went into effect on June 10, 2014 and

was lifted on June 13, 2014, when the outstanding fine was paid. Mr. Overmyer was in contact with the employer about the suspension and immediately advised the employer when the fine was paid and the suspension was lifted. At some point between the time of the layoff and July 25, 2014, Mr. Overmyer, who was without income or the opportunity to generate income from the employment, contacted the employer and requested a $200.00 advance, which the employer granted. The employer did not give Mr. Overmyer a chance to work to repay the advance.

The employer last had direct contact with Mr. Overmyer on June 27, 2014. The employer had still not recalled Mr. Overmyer to the employment at that time. When the employer had still not recalled Mr. Overmyer to the employment by July 25, 2014, Mr. Overmyer's mother, Angie Henderson, contacted Mr. Myers about the status of Mr. Overmyer's employment. Mr. Overmyer's mother became involved because she had been providing financial support to Mr. Overmyer during the period of the layoff. Mr. Myers assured Ms. Henderson that Mr. Overmyer was still employed and that the employer hoped to have its trucks back in operation by the following Wednesday. Mr. Myers assured Ms. Henderson that the employer was continuing to carry health insurance for Mr. Overmyer. Mr. Myers told Ms. Henderson that the employer had been trying to get ahold of Mr. Overmyer. That statement was untrue. The employer had not been trying to get ahold of Mr. Overmyer. When Ms. Henderson inquired as to whether it would be okay for Mr. Overmyer to apply for unemployment insurance benefits, Mr. Myers told Ms. Henderson that would be okay if the employer's trucks were not operating by the following Wednesday.

Because Mr. Overmyer had been laid off and without income for an extended period, Mr. Overmyer applied for a temporary forklift operator position that he intended to hold only until he was recalled to his full-time, permanent employment at J. Myers Trucking. Mr. Myers' daughter was employed at the facility where Mr. Overmyer had applied for the temporary position. Mr. Myers learned of Mr. Overmyer's application for the temp position. Mr. Overmyer at no time had given notice to J. Myers Trucking that he intended to sever that employment relationship and did not intend to sever that employment relationship. Mr. Overmyer had left his personal effects in his assigned truck. Within a few weeks of the layoff, Mr. Overmyer had complied with the employer's directive that he make certain that his truck was ready to roll when the employer regained its authorization to operate. The employer had also directed Mr. Overmyer to appear for a drug test, even though the employer did not have any work for Mr. Overmyer at the time and there was no basis for subjecting Mr. Overmyer to the drug test. The employer's interaction with Mr. Overmyer early in the period of the layoff was in the nature of buying time with Mr. Overmyer by leading him to believe that he might be returning to work in the near future, when that was not the case.

Ms. Henderson had her second and last contact with J. Myers Trucking on behalf of Mr. Overmyer on August 4, 2014. Ms. Henderson advised Mr. Myers that because the employer had not recalled Mr. Overmyer as the employer had suggested he might, Mr. Overmyer had gone forward with his application for unemployment insurance benefits. Mr. Myers expressed disappointment. Mr. Myers told Ms. Henderson that his company was continuing to pay for Mr. Overmyer's health insurance. That statement was untrue. The employer had in fact cancelled Mr. Overmyer's health insurance coverage at the end of July 2014. When Ms. Henderson told Mr. Myers that she had been to the FMCSA website and had seen that the FMCSA listed the employer as "unauthorized," Mr. Myers' demeanor turned negative.

REASONING AND CONCLUSIONS OF LAW:

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

> 24.1(113) 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.

Mr. Overmyer and Ms. Henderson provided testimony during the hearing that was straightforward, logical, plausible, consistent, and credible. The employer did not do that. The employer would have the administrative law judge believe that the employer would completely shut down all trucking operations for two and a half months while the employer applied for an improved freight carrier rating. The employer would have the administrative law judge believe that during that extended period when the employer was generating no revenue whatsoever, the employer would be willing to pay eight or so drivers $400.00 to $500.00 per week for shop busywork. The employer would have the administrative law judge believe that the employer would happily bleed $3,200.00 to $4,000.00 per week, upwards of $32,000.00 or more. To call such testimony implausible is an understatement. To call such testimony false and intentionally misleading would be more to the point.

The weight of the evidence indicates that Mr. Overmyer was laid off effective May 31, 2014 and had not been recalled to the employment. Because the separation was neither a voluntary quit nor a discharge for misconduct, Mr. Overmyer is eligible for benefits provided he is otherwise eligible. See Iowa Code section 96.5(1) and (2)(a), regarding voluntary quits and discharges. The employer's account may be charged for benefits.

While the evidence does not establish a voluntary quit, the administrative law judge notes that the employer's dishonesty in its dealings, directly and indirectly, with Mr. Overmyer provided good cause for a quit.

DECISION:

The claims deputy's August 20, 2014, reference 01, decision is reversed. The claimant was laid off effective May 31, 2014. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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