

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARYL L HEIDEMAN**  
Claimant

**APPEAL NO. 09A-UI-02259-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OLD DUTCH FOODS INC**  
Employer

**Original Claim: 12/07/08  
Claimant: Appellant (2/R)**

Section 96.5-3-a – Work Refusal  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Daryl L. Heideman (claimant) appealed a representative's February 4, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits due to a refusal of work with Old Dutch Foods, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 5, 2009. The claimant participated in the hearing and was represented by Michael McEnroe, attorney at law. Dale Westover appeared on the employer's behalf. 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.

**ISSUES:**

Is the claimant disqualified due to refusing an offer of suitable work?

Is the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 4, 2001. He worked full time as a route sales person in the Waterloo, Iowa, area for the employer's snack food business. He typically worked long days of ten hours or more. He last physically worked on or about September 25, 2008.

The claimant was involved in a work-related accident on April 24, 2008. This resulted in him being off work for a substantial period of time due to his injuries; this was covered under the employer's workers' compensation insurance. The claimant's doctor allowed him to attempt to return to work on or about September 25, and the claimant worked about a day and a half. However, he suffered such pain that he returned to the doctor and was put back on medication; the doctor instructed that he was not to work during the time he was on the medication. In addition, on September 30 the doctor indicated that he could work no more than eight hours per day and for no more than 40 hours per week.

On October 14, the claimant called the employer and advised that he was done with the medication and could return to work within the existing restrictions. However, since the claimant was limited to no more than eight-hour days, the employer indicated the claimant could not yet return to work. On about October 20, the employer received another doctor's report indicating the claimant had zero impairment but had a 40-pound restriction subject to proper body mechanics. The claimant's job description required being able to lift 50 pounds. The employer believed the claimant would still resist returning back to work under the most recent doctor's report. However, the employer did not contact the claimant and offer him work to return to. Rather, on October 31, 2008, the employer informed the claimant that his job was ended. A determination regarding this separation has as yet not been made.

The claimant was given a full release by his doctor without any remaining restrictions as of approximately December 8, 2008. He established an unemployment insurance benefit year effective December 7, 2008.

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

The primary issue in this case is whether the claimant refused a suitable offer of work. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if he has failed without good cause to accept suitable work when offered.

Rule 871 IAC 24.24(8) provides that in order for there to be a disqualification, both the offer of work and the claimant's responding refusal must occur within the claimant's benefit year. Here, the claimant did not have an open claim at the time an offer of work was made, so any refusal would not be effective to disqualify him from benefits.

Further, rule 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant. In this case, there was no bona fide offer of work and no definite refusal of work in the October 20, 2008 time frame. Benefits are allowed, if the claimant is otherwise eligible.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible, the claimant must be able to work, available for work, and earnestly and actively seeking work. Iowa Code § 96.4-3. A doctor's statement that the claimant is released without restriction is prima facie evidence that the claimant's is able and available for work. 871 IAC 24.22(1)a. The employer has not presented any evidence to the contrary. The claimant is able and available for work at least as of December 7, 2008, and benefits are allowed, if the claimant is otherwise eligible.

The separation issue has not been previously reviewed and was not included in the notice of hearing for this case; the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The representative's February 4, 2009 decision (reference 01) is reversed. The claimant did not refuse a suitable offer of work. The claimant is able to work and available for work effective December 7, 2008. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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