

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN ABKES
Claimant

APPEAL NO: 07A-UI-03706-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURRIER PLUMBING & SPAS INC
Employer

OC: 02/18/07 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 3, 2007, reference 02, decision that denied benefits for the one week ending March 10, 2007. After due notice was issued, a telephone conference hearing was held on April 25, 2007. Claimant participated. Employer participated through C. J. Burrier. The parties agreed to waive notice on the separation issue and are in agreement about the facts of both the recall to work and the separation.

ISSUE:

The issue is whether claimant refused a suitable offer of recall to work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed until March 12, 2007 when he quit to enter self-employment. He last worked on February 23, 2007 and was laid off due to a lack of work for two weeks. On Friday, March 9 Burrier left a message and then talked to his wife Kathy on Sunday, March 11 telling her that work was available to claimant on Monday, March 12. Kathy told Burrier that he did not plan on going back to work and he was at their river cabin fixing docks. Claimant dropped off a letter of resignation on March 12 effective immediately and turned in his keys, phone and gas card. Claimant has not filed any claims for benefits after March 10, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of recall to work effective March 12, 2007 by leaving to enter self-employment.

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.

Iowa Code § 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers, which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(7) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(7) Where an individual devotes time and effort to becoming self-employed.

871 IAC 24.25(19) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(19) The claimant left to enter self-employment.

The offer of recall to work after the two-week layoff was suitable and claimant's refusal of the offer was related to his decision to quit to become self employed. Thus, claimant is entitled to benefits for the two weeks ending March 10, 2007 and is disqualified thereafter.

DECISION:

The April 3, 2007, reference 02, decision is reversed. Claimant was laid off due to a lack of work for the two weeks ending March 10, 2007 and refused a recall to suitable work by leaving the employment to begin self-employment on March 12, 2007. Benefits are allowed for the two weeks ending March 10, 2007 and because of the separation, are withheld effective March 11,

2007 until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. Inasmuch as no benefits were claimed or paid after March 10, 2007, no overpayment applies.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs