IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FRANKIE W MANNING
Claimant

G & R MILLER CONSTRUCTION
MILLER WELDING & TILING INC
Employer

APPEAL NO: 13A-UI-06059-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/21/13
Claimant: Appellant (1)

871 IAC 24.1(113)a – Layoff
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Frankie W. Manning (employer) appealed a representative's May 14, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with G & R Miller Construction/Miller Welding & Tiling, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2013. This appeal was consolidated for hearing with one related appeal regarding a 2012 claim year, 13A-UI-06058-DT. The claimant participated in the hearing. Rick Miller 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:

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? Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer in about February 1990. He worked full time as a heavy equipment operator. His last day of work was December 18, 2012. The employer laid him off as of that date due to the change in season and weather as the ground was starting to freeze.

On March 29 the employer had the claimant come in for an evaluation. Miller, the employer/owner indicated that the claimant would be getting a raise and advised the claimant that he should report back to work on April 1. The claimant was in agreement at that time.

The claimant came in at about 7:00 a.m. on April 1. Miller asked the claimant if he could drive a dump truck, and the claimant initially answered "yes." Miller followed up by asking if the claimant had gotten his CDL back, as he was aware that the claimant had lost his CDL over a

year prior and was eligible to seek reinstatement of the CDL in February 2013. The claimant answered "no." Miller then became upset with the claimant and raised his voice, indicating he felt the claimant had lied by initially answering that yes he could drive a dump truck. He further questioned why the claimant had not utilized the time of his layoff to take care of reacquiring his CDL.

The claimant did not appreciate Miller's response. He said, "I don't need this," and started to leave. Miller indicated that if the claimant was leaving, he needed to turn in his company property. The claimant did so and then left.

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.

The separation between the claimant and the employer was a layoff by the employer due to the end of the season; the employer had no work to provide to the claimant. As there was not a disqualifying separation, benefits are allowed if the claimant is otherwise eligible. As the claimant never truly returned to any actual work after the December 18, 2012 layoff, there was not a further separation from employment on April 1, but the events on April 1 must then be analyzed to determine whether there was a refusal of work at that time, and if so if it is disqualifying.

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 or recall to work when offered. 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 a bona fide offer of recall to work. While the claimant initially accepted the offer, by his actions on April 1 he effectively refused the work. The only remaining question would be if the offer was not suitable or if the refusal was for good cause.

The terms of employment for the recall would have been the same or better (in terms of wage) than the claimant had been receiving in the past, so the offer was suitable. The claimant asserts in effect that Miller's raising of voice to him on April 1 constitutes good cause for refusing the offer of work. While this case is not a voluntarily quit, the same analysis in determining whether a claimant has quit for good cause attributable to the employer is useful.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, he has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. *O'Brien v. Employment Appeal Board*, 494 N.W.2d 660 (Iowa 1993); *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (FL App. 1973). Rather, his complaints do not surpass the ordinary tribulations of the workplace. The claimant has not established that he had good cause for refusing the suitable offer of recall to work.

As of April 1, 2013 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

DECISION:

The representative's May 14, 2013 decision (reference 01) is affirmed. The claimant was laid off from the employer as of December 18, 2012 due to a lack of work. However, on April 1, 2013 the claimant refused a suitable offer of work without good cause. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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