

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH LOZANO**  
Claimant

**APPEAL NO: 14A-UI-04751-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRI J INC**  
Employer

**OC: 04/13/14**  
**Claimant: Respondent (1)**

Section 96 5-1 – Voluntary Leaving – Layoff

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 5, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 28, 2014. The claimant participated in the hearing. Dennis Johnson, President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant was laid off.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier for Pump 'N Pak from January 2, 2008 to April 14, 2014. She was laid off when the employer sold the business and she chose not to work for the new owner.

The employer sold the business April 14, 2014. The new owner guaranteed all current employees a job and effectively the same hours with at least a \$.25 raise. The claimant was told she could either accept the new owner's offer of employment or receive unemployment benefits and she decided to accept unemployment because she was finishing her associate's degree and plans to attend a four-year school as a full-time student in the fall.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 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.

When an employer sells his business to a successor employer, the claimant is technically considered laid off. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

The real question in this case relates to whether the claimant refused a suitable offer of work. Employees receiving benefits are required to accept suitable offers of work. In order to be considered suitable, the job offered must have similar hours and pay as well as working conditions. The Department also must consider the degree of risk involved to the claimant's health, safety and morals, the claimant's physical fitness, prior training, length of unemployment, and prospects for securing local work in the claimant's individual's customary occupation, the distance of available work from the claimant's residence and any other factor which the Department finds bears a reasonable relation to the purposes of this paragraph. The wages offered must meet a sliding scale amount that is based on the length of time the claimant has been unemployed and the percentage of wages required by the offer drops after the fifth week of unemployment; after the twelfth week of unemployment; and after the eighteenth week of unemployment. See Iowa Code section 96.5-3-a.

That code section is not applicable in this case because the offer of work was made before the claimant's current claim year started. Because the claimant did not have a valid claim for unemployment benefits at the time of the offer, the administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. See 871 IAC 24.24(8).

This layoff is a non-traditional layoff in that the claimant will not be returning to work, and any layoff expected to exceed four or five weeks in duration is not considered a temporary layoff but rather a permanent one. Consequently, the claimant is required to make at least two work searches per week and report those to the Department. If she has questions about work searches or any statements made, she should contact her local office.

**DECISION:**

The May 5, 2014, reference 02, decision is affirmed. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css