IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL J QUINN
Claimant

GREENS APPLIANCE, HEATING
Employer

APPEAL NO. 15A-UI-08188-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/12/15
Claimant: Appellant (5)

871 IAC 24.1(113) – Layoff
Iowa Code Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

Michael Quinn filed a timely appeal from the July 15, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Quinn had voluntarily quit on June 29, 2015 without good cause attributable to the employer and due to a non-work-related illness or injury. After due notice was issued, a hearing was held on August 20, 2015. Mr. Quinn participated personally and was represented by paralegal Jon Geyer. Mr. Geyer presented testimony through Mr. Quinn and Liz Meier. Dan Sprague, President, represented the employer and presented additional testimony through Linda Sprague, Vice President. The parties waived formal notice on the issue of whether the claimant refused suitable work without good cause. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-08189-JTT. Exhibits One through Eight were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant during the claim year that began on April 12, 2015. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant in connection with the additional claim that was effective March 29, 2015 and that was based on the April 13, 2014 original claim date. The administrative law judge took official notice of the Agency's record of claimant's weekly claims for benefits.

ISSUE:

Whether there a separation from the employment subsequent to the March 27, 2015 layoff.

Whether the claimant refused recall to suitable work without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Quinn commenced his full-time employment with Green's Appliance Heating Cooling in July 2013 and last performed work for the employer on March 26, 2015. Mr. Quinn worked for the employer as an appliance repair technician. The work involved going on service calls to

customers' homes, diagnosing the issue with the customer's large appliance, and repairing the appliance. The work involved large appliances other than refrigerators. Mr. Quinn would begin his work day at 7:30 a.m. and work until the day's work was completed. His quitting time could be anywhere from noon to 6:00 p.m.

At the time of hire, the employer agreed to compensate Mr. Quinn as follows. The employer agreed to pay Mr. Quinn 25 percent ($17.25) of a $69.00 diagnostic/trip charge, 30 percent of the labor cost associated with the repair, and 10 percent of the cost of parts used on the repair. Two weeks into the employment, the employer changed the compensation structure as follows. The employer changed the diagnostic compensation to a $20.00 flat rate. The employer changed the compensation for the labor cost to 21 percent of the total. The employer continued to pay Mr. Quinn 10 percent of the cost of parts used on the repair. Mr. Quinn elected to continue in the employment despite the change in the compensation structure and continued to perform his regular duties under the same payment structure until December 29, 2014. The compensation structure and other conditions of employment were in step with similar work and businesses in the locality.

On December 29, 2014, Mr. Quinn suffered injury in the course of the employment while he was at a customer's home performing a repair. The parties dispute whether the injury resulted from accidental electrocution or from a seizure. Mr. Quinn was diagnosed with a torn right rotator cuff. Mr. Quinn is right-handed. Mr. Quinn also had several damaged teeth. The incident gave rise to a workers' compensation claim. On February 27, 2015, Mr. Quinn underwent surgery on his shoulder.

Mr. Quinn remained off work until March 10, 2015, when he returned to work at the employer's request to work for the limited purpose of assisting with training another technician. At that time Mr. Quinn had a medical restriction that prevented him from lifting more than five pounds with his right arm. The employer paid Mr. Quinn $20.50 per hour to ride along with and give guidance to the other technician. The work, while it lasted was full time or near full time. On or about March 27, 2015, employer laid off Mr. Quinn. The employer directed Mr. Quinn to apply for unemployment insurance benefits in connection with the layoff. Mr. Quinn has not performed any further work for the employer since the time of the layoff.

On April 27, 2015 Mr. Quinn's health care provider provided him with a patient status report that released him to return to work with a five-pound lifting restriction applicable to his right arm and a further restriction that he not use his right arm above chest height. The document indicated that Mr. Quinn was to participate in physical therapy two to three times per week for the next four weeks and to return for a follow-up medical appointment in four weeks.

On May 18, 2015, Mr. Quinn's health care provider provided him with an additional patient status report. That document released Mr. Quinn to return to work with a 25-pound lifting restriction applicable to his right arm. The document indicated no other medical restrictions. The document indicated that Mr. Quinn should continue with physical therapy two to three times per week for the next four weeks and return for follow-up medical appointment in four weeks.

On June 15, 2015 Mr. Quinn's health care provider provided him with a patient status report. The document released Mr. Quinn to return to work without restrictions effective June 15, 2015. The document did not order additional physical therapy. The document indicated that Mr. Quinn should return for a follow-up medical appointment only as needed. When the employer received their copy of the patient status report that released Mr. Quinn to return to work without restrictions, the employer was interested in having Mr. Quinn return to his regular duties under the same conditions that had been in place up to the time of the injury in December 2014. The

employer attempted to contact Mr. Quinn for the purpose of recalling him to the employment. Dan Sprague, the president and general manager, called Mr. Quinn's cell phone number and left a voicemail message for Mr. Quinn. The employer also left a couple text messages for Mr. Quinn. When that did not prompt a response from Mr. Quinn, Mr. Sprague asked the appliance service manager to reach out to Mr. Quinn. The appliance service manager sent a text message to Mr. Quinn, but Mr. Quinn did not respond. Mr. Quinn's daughter-in-law, Liz Meier, worked for Greens' as a part-time service coordinator. Mr. Sprague asked Ms. Meier to contact Mr. Quinn to let them know that the employer was trying to reach him to recall him to the employment. Though Ms. Meier was in regular contact with Mr. Quinn, her contact with Mr. Quinn did not prompt Mr. Quinn to make contact with the employer.

On June 19, 2015, Mr. Sprague sent a letter to Mr. Quinn by certified mail. The letter reads as follows:

> Dear Mike,
>
> This week we received word from the rep from our insurance company who handles our work comp claims. He said he has received notification from your doctors that you have full clearance to return to work with no restrictions. This is great news and we are looking forward to having you return.
>
> We have attempted to reach you on your cell phone, and have left both voicemail and text message. Since we have not received a reply, we are sending you this letter.
>
> If you wish to return to your position and greens, please give me a call within 10 days of receiving this and we will make arrangements for your van and uniforms.
>
> Best regards,
>
> Dan Sprague
> Gen. Manager

Mr. Quinn received the employer's June 19 letter. On June 29, 2015, Mr. Quinn sent a letter to Mr. Sprague by certified mail. Mr. Quinn indicated wrote as follows:

> Dear Mr. Sprague:
>
> I'm writing this in response to your June 19, 2015 letter to me. I would be willing to come back to work for you, but due to the unstable employment that I received when I worked for Greens appliance heating and cooling in the past, I would first need assurance of job stability
>
> I left a good job in July 2013 to come to work for you with the offer of a 30% commission on labor, a 25% commission on trip charge, and 10% commission on parts. Two weeks after I was hired, my commission on labor was reduced to 21%, which was a salary reduction I feel I should have been informed up before I was hired. Had I known you were going to reduce my commission I would have stayed at my previous job.
>
> You also agreed to train me on refrigeration, but you never follow through on this agreement. In February 2014, you laid me off, but I had never received the refrigeration training. Then in May 2014 you called me back to work, but only to basically part-time hours working only a few days a week, and you would often reassign my routes to

> others. Then as you know, on December 29, 2014 I was hurt on the job, and I required shoulder surgery. In March 2015 I return to work to train another employee to do the work that I had been doing before I was injured. After three weeks of performing such work you let me go again.
>
> I appreciate that you would like me to return to work for you, and I would very much like to do so. I also realize that my surgeon said I was able to return to work without restrictions. Unfortunately my shoulder is still sore, weak, and I do not have full movement of it.
>
> I will return to work for you if you will give me written assurance that you will provide me at least 25% commission, training on refrigeration, and provide me with full-time work. I would also require that if layoffs are necessary that they are done on a seniority basis. Thank you for letting me know of your decision by US mail as soon as you are able.

On June 30, 2015, Mr. Sprague sent a responsive letter to Mr. Quinn. Mr. Sprague wrote as follows:

> Dear Mike, I'm responding to your letter dated June 29, 2015.
>
> Unfortunately your demand for job stability is impossible to guarantee. Greens appliance, heating and cooling, Inc. has never had a policy of job stability, or compensation plan, based on seniority. Employment at Greens is based solely on our work availability and the employee's ability to perform the work required. There has never been a guarantee made any of Greens employees. The company policy change in commission compensation resulted in a pay raise for everyone. Paying the technician a $20.00 flat fee for the diagnosis plus parts and labor commission was an improvement to an old system and was implemented for all commission employees. The fact that the policy change occurred shortly after you began to work for Greens, and did not allow you an opportunity to compare the old system to the new system, may have caused you to think you are being paid less than what you were hired, but that is simply not true.
>
> I cannot accept your claim that Greens did not attempt to teach you how to work on domestic refrigerators. Perhaps you do not recall the days when Greens paid you an hourly wage to ride with other technicians to learn refrigeration, along with some additional training here in the shop. Our records clearly demonstrate our expense and effort to teach you how to work on refrigerators. In spite of our attempt to help you, a couple of the technicians involved in training you reported that you had difficulty learning the concept.
>
> Greens also has record of the excessively high number of callbacks from your routes. In addition we are sitting on nonrefundable parts that you ordered on a call that you incorrectly diagnosed.
>
> Greens has been very patient with your level of skill and provided you support with every problem you came across.
>
> Since you are not in agreement to return to work unless Greens accepts your unreasonable demands, we have no other choice but to reject your claim for unemployment due to job refusal.

> You mentioned your disappointment with leaving your previous job. There is good news for you then, Sears has lost several of their service technicians and are now hiring! I would recommend you contact them immediately you will probably get your job back if you are willing to work.

Mr. Quinn did not make further contact with the employer or return to the employment.

Mr. Quinn had established an original claim for benefits that was effective April 13, 2014. When the employer laid Mr. Quinn off effective March 27, 2015, Mr. Quinn established an "additional claim" for benefits that was effective March 29, 2015. In connection with that additional claim, Mr. Quinn received benefits for the two week period ending April 11, 2015. At that time, the claim year that had started in April 2014 expired. Mr. Quinn established a new claim that was effective April 12, 2015. In connection with that claim, Mr. Quinn received benefits for the period between April 12, 2015 and July 11, 2015. Those benefits included $896.00 in benefits for the two-week period between June 28, 2015 and July 11, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

> 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.
>
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
>
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
>
> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The separation from the employment occurred on or about March 27, 2015, when the employer most recently laid Mr. Quinn off from the modified duty assignment the employer had provided during that month. The layoff would not disqualify Mr. Quinn for benefits or relieve the employer of liability for benefits.

What occurred in June 2015 concerned a recall to employment and refusal of recall.

Iowa Admin. Code r. 871-24.24(8) provides:

> (8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit

year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Code section 96.5(3)b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

The employer's June 19, 2015 certified letter constituted a bonafide offer and recall to the same regular duties under the same working conditions has existed from two weeks into the employment until December 29, 2014, when Mr. Quinn went off work due to injury. The work was suitable work. The conditions of the employment, including the compensation, were not substantially less favorable than those prevailing for similar work in the locality. Mr. Quinn's letter of June 29, 2015, in which he rejected the notion of returning under the previous conditions, constituted a refusal of suitable work. Mr. Quinn's desire to renegotiate the terms of his employment did not provide good cause for refusing the suitable work offered by the employer. The offer and the refusal both occurred at a time when Mr. Quinn had an active claim for unemployment insurance benefits. Effective June 29, 2015, Mr. Quinn is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Quinn must then meet all other eligibility requirements. The employer's account is relieved of liability for benefits paid to the claimant for the period beginning June 28, 2015.

DECISION:

The July 15, 2015, reference 01, decision is modified as follows. The claimant was laid off effective March 27, 2015. The layoff did not disqualify the claimant for benefits or relieve the employer's account of liability for benefits. The claimant refused suitable work without good cause on June 29, 2015. Effective June 29, 2015, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must then meet all other eligibility requirements. The employer's account is relieved of liability for benefits paid to the claimant for the period beginning June 28, 2015.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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