

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWAYNE J KRUMVIEDE
Claimant

APPEAL NO. 07A-UI-10515-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRINGVILLE READY MIX INC
Employer

OC: 01/14/07 R: 04
Claimant: Appellant (2)

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Dwayne Krumviede (claimant) appealed a representative's October 29, 2007 decision (reference 05) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with Springville Ready Mix (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 30, 2007. The claimant participated personally. The employer participated by Larry Wittenburg, President.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in June 2001, as a full-time truck driver. The employer had a policy that an employee could not receive holiday pay if he was not available for work the days before or after a holiday. Labor Day was September 3, 2007. The Saturday before the holiday, the claimant was originally unavailable for work but he later told the employer he was available. The employer responded that the claimant was lucky that he found someone to work his hours the Saturday before the holiday.

The claimant took vacation from September 13 through 15, 2007. On September 13, 2007, the claimant opened his paycheck and found the employer did not pay him holiday pay. The claimant telephoned two office workers about the mistake in his paycheck. Later, he talked to the president. They argued and the claimant hung up on the employer. Two days later, the employer telephoned the claimant and told him he could take the week off for hanging up on the employer.

On September 25, 2007, the claimant returned to work and the two again starting arguing about the holiday pay. The employer told the claimant he was fired outside the hearing of other office workers. When the claimant left the employer's office, the employer told the office workers the claimant was quitting.

On October 26, 2007, the employer offered the claimant work, but the claimant had previous plans. On October 29, 2007, the employer again offered the claimant work, but he was waiting to hear about another job. He did not contact the employer when the other job did not materialize.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse an offer of suitable work.

871 IAC 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.

The claimant was offered work by a former employer with whom he had previously quit. When work is offered by a previous employer and the conditions that caused the previous quit are still in existence, the offer of work is not suitable. The condition which caused the previous quit was that the employer did not pay the claimant wages when they were due and owing. The employer has still not paid the claimant those wages. The claimant's refusal of work was not a disqualifying event. The claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 29, 2007 decision (reference 05) is reversed. The claimant did not refuse an offer of suitable work and is eligible to receive unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw