

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS O STRUNK
Claimant

APPEAL NO. 10A-UI-05882-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOO'S SUPER SERVICE
Employer

**Original Claim: 01/03/10
Claimant: Appellant (4/R)**

Section 96.5-3-a – Refused Recall to Work
Section 96.4-3 – Availability for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's a representative's April 9, 2010 decision (reference 02) that disqualified him from receiving benefits because he refused a recall to work without good cause. A telephone hearing was held on May 25, 2010. The claimant participated in the hearing. Cheyenne Brown testified on the claimant's behalf. Robbie Escher 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 the claimant available to work the week of March 1, 2010?

Did the claimant refuse to return to work after being recalled to work?

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time employee on August 3, 2009, to help the employer with power washing. The employer temporarily laid off the claimant on January 1, 2010. When he was laid off from work in January, the employer informed the claimant he would return to work in March.

In late February 2010, the claimant talked to David Escher and asked if it would be all right to move his girlfriend from Ottumwa to Burlington. David Escher indicated this would not be a problem and the claimant could take as much time as he needed to do this.

Initially, the claimant thought he would have his girlfriend moved to Burlington by March 1, 2010. The employer asked the claimant to return to work on March 1, 2010. There were problems and she could not move into her Burlington apartment on March 1. The claimant informed David Escher that he was unable to report to work on March 1. The employer understood the claimant would be able to work on March 4. The claimant kept delaying the date he could return to work because he had not yet moved his girlfriend to Burlington.

Robbie Escher sent the claimant a text message on March 4 about reporting to work. The claimant became upset because he understood she wanted him to report to work and about two hours from work. The claimant believed Robbie Escher should understand it was not economically feasible for him to drive two hours for an hour of work. When Robbie Escher called the claimant on March 4 to find out when he would be able to report to work, the claimant raised his voice when he tried to explain he was two hours

away from work until he had moved his girlfriend into her Burlington apartment. Escher reported the confrontation she had with the claimant to her husband, David. Shortly after David learned about the confrontation, the claimant called him to apologize for getting upset at his wife. Escher told the claimant that if he could not get along with his wife, he did not have a job.

On March 5 or 6, the claimant had moved his girlfriend to Burlington. He then personally talked to David Escher about his job. Escher told the claimant he did not have job, since he could not get along with his wife. The employer hired another employee to replace the claimant on March 8, 2010.

The claimant filed a claim for the week ending March 6, 2010. He received benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he refused a recall to return to work. Iowa Code § 96.5-3-a. Before a claimant can be disqualified for refusing a recall to work, he must be able to and available for work. 871 IAC 24.24(4).

The employer recalled the claimant to return to work on March 1, 2010. The claimant was not available to work this week because he was in the process of moving his girlfriend from Ottumwa to Burlington. Initially, the claimant thought he would be done with this move by March 1. Unexpected delays prevented the claimant from moving his girlfriend to Burlington until March 5 or 6. The claimant was not available to work for the employer the week of March 1 because he stayed about two hours from work until he moved his girlfriend to Burlington. The evidence establishes the claimant was not available to work the week of February 28, 2010. Therefore, he is not eligible to receive benefits for the week ending March 6, 2010. Iowa Code § 96.4-3.

When the claimant was available to work and could return to work, the employer rescinded the recall to work. This means the claimant remains on a layoff status. As of March 7, the claimant remains qualified to receive benefits. The week ending March 6, the claimant was not available to work. Since he filed for and received benefits for this week, an issue of whether he has been overpaid for this one week is remanded to the Claims Section to determine.

DECISION:

The representative's April 9, 2010 decision (reference 02) is modified in the claimant's favor. The claimant was not available to return to work the week of March 1, 2010. Since the claimant was not available to work the week ending March 6, he is not eligible to receive benefits this week. When the claimant was available to work, the week of March 7, 2010, the employer rescinded the recall to return to work, so the claimant remained laid off from work. As of March 7, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements. The claimant is not eligible to receive benefits for the week ending March 6, 2009, because he was not available to work this week. An issue of overpayment for the week ending March 6 is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw