

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M PATCHIN**

Claimant

**APPEAL NO. 14A-UI-10989-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRUCE LAMMERS INC**

Employer

**OC: 09/21/14**

**Claimant: Respondent (1)**

Iowa Code Section 96.5(3) – Work Refusal  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 14, 2014, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible based on an Agency conclusion that the claimant had good cause for refusing an offer of work from the employer on September 29, 2014. After due notice was issued, a hearing was held on November 12, 2014. Claimant John Patchin participated personally and was represented by attorney, Heather Carlson. Bruce Lammers represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-10988-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. Exhibits One through Eleven and A were received into evidence.

**ISSUES:**

Whether Mr. Patchin refused an offer of suitable work on or about September 29, 2014 without good cause.

Whether Mr. Patchin has been able to work and available for work since he established his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Bruce Lammers, Inc., doing business as White Front Feed & Seed, sells agricultural seed and fertilizer. John Patchin was employed as a full-time general laborer from September 2013 and last performed work for the employer on September 11, 2014. The employer's busy periods coincide with spring planting and fall harvest. During those times, the employer expects employees to work extended hours. Outside the busy periods, Mr. Patchin's regular work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Mr. Patchin's duties included truck driving, mechanical repairs, and loading and unloading trucks. Mr. Patchin's immediate supervisor was Ron Haas.

In February 2014, Mr. Patchin suffered serious injury in a workplace accident when his lower left leg was crushed by a forklift operated coworker Dale Richardson. The injury required surgery and time away from work. Mr. Patchin continued to have issues with his leg through the end of the employment. At the end of July 2014, Mr. Patchin was released by a doctor to perform his full duties, but no more than six hours per day. Mr. Haas was in the habit of sending Mr. Patchin home early if Mr. Patchin was not needed in the workplace. On August 15, 2014, Mr. Patchin was instructed by a doctor to begin wearing a compression stocking and this helped with Mr. Patchin's pain issues. Mr. Haas continued to send Mr. Patchin home early. The employer wanted Mr. Patchin to be as healed as possible when the fall busy season started.

In connection with Mr. Patchin's return to work after his injury and his continued work for the employer through September 11, 2014, Mr. Patchin had interpersonal conflicts with one or more coworkers. One of the coworkers involved in the conflict with Mr. Patchin was Mr. Richardson, the coworker who had operated the forklift in February at that time Mr. Patchin was injured. Mr. Richardson berated Mr. Patchin based on Mr. Patchin's injury and ongoing issues with his leg. Mr. Richardson called Mr. Patchin "gimpy." Mr. Richardson asked Mr. Patchin whether Mr. Patchin was "going to be a bitch" about his leg.

On September 11, Mr. Haas approached Mr. Patchin in the workplace and asked Mr. Patchin whether he and his attorney would be willing to look into obtaining disability benefits for Mr. Patchin. Mr. Patchin retained legal counsel to assist him in addressing the workplace injury issue. Mr. Haas told Mr. Patchin that the employer was thinking of letting him go due to issues related to his ability to perform his work duties. On that same day, Bruce Lammers, Owner, and Mr. Lammers' daughter, Teresa Coons, met with Mr. Patchin and told him that they wanted him to undergo a mental health evaluation due to the ongoing issues with his leg and interpersonal conflict in the workplace. Ms. Coons related to Mr. Patchin that she and her husband had issues with anxiety and were medicated for those issues. Ms. Coons' implied assertion was that Mr. Patchin was in need of psychotropic medication. Mr. Patchin was not in need of mental health evaluation or treatment. The employer suspended Mr. Patchin and conditioned his return to the employment on him submitting to a mental health evaluation. After the suspension was implemented, Mr. Patchin contacted Ms. Coons to request to return to work. Mr. Patchin asserted that the evaluation was unnecessary. Ms. Coons told Mr. Patchin he could not return to work until he underwent the evaluation. The employer scheduled a mental health evaluation for Mr. Patchin on September 30, 2014. The employer expected Mr. Patchin to bear the expense of the evaluation.

On September 26, 2014, Mr. Patchin's attorney sent a letter to the employer indicating that Mr. Patchin would submit to the evaluation, but that since it was the employer who wanted the evaluation, she and Mr. Patchin would expect the employer to bear the cost of the evaluation. Mr. Lammers was spooked by the contact from the attorney and became concerned that he might be opening himself up expense beyond the mental health evaluation. On September 29, Mr. Lammers telephoned Mr. Patchin and told him just to forget about the evaluation and report for work the next day. Mr. Lammers told Mr. Patchin that he was concerned about involving attorneys in the matter and the prospect of a lawsuit. Mr. Lammers asserted that Mr. Patchin did not want to undergo the evaluation, but Mr. Patchin had at that point resigned himself to undergoing the evaluation to satisfy the employer. On September 30, a couple hours before the mental health evaluation appointment, the employer cancelled the appointment and advised the provider that the employer would not pay for the appointment. The provider notified Mr. Patchin of the cancelation and the reason for the cancelation. Mr. Patchin elected not to return to the employment.

Mr. Patchin established a claim for unemployment insurance benefits that was effective September 21, 2014 in response to the suspension. Mr. Patchin had received \$2,576.00 in unemployment insurance benefits for the period of September 21, 2014 through November 15, 2014. Mr. Patchin has been released to work without restrictions since he established his claim.

### **REASONING AND CONCLUSIONS OF LAW:**

Because the work refusal on September 29, 2014 occurred in the context of the September 11, 2014 suspension, effective discharge, and attending circumstances, the administrative law judge will restate here the reasoning set forth in the companion case that addresses the separation.

The evidence in the record fails to establish misconduct in connection with the employment as the basis for the suspension and discharge. At the hearing, the employer alleged attendance issues, but provided no evidence concerning specific absences. The employer submitted unsworn written statements from coworkers regarding alleged belligerence on the part of Mr. Patchin. The employer elected not to present testimony from any of those employees. Mr. Patchin had presented sufficient evidence to rebut the assertions contained in the unsworn statements submitted by the employer. The administrative law judge had the opportunity to hear and weigh not only Mr. Patchin's testimony, but also his demeanor, during the hearing. The administrative law judge found no reason to discount Mr. Patchin's testimony and no reason, as a layperson, to suspect he was in need of mental health evaluation and/or treatment. The weight of the evidence indicates an involuntary separation prompted by the employer's concerns that Mr. Patchin might no longer be able to perform his duties to the employer's satisfaction, especially during the busy season. Such concerns would not constitute misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Patchin was discharged for no disqualifying reason.

If a claimant refuses an offer of suitable work without good cause at a time when the claimant has an active claim for unemployment insurance benefits, the claimant is disqualified for benefits until he works in and is paid wages for insured work equal to ten times his weekly benefit amount. See Iowa Code section 96.5(3).

The evidence indicates that the employer made a bona fide offer of employment on September 29, 2014. The evidence indicates that Mr. Patchin refused that offer, by declining to return to the employment as directed by the employer. Mr. Patchin had an active claim for unemployment insurance benefits at the time of the offer and the refusal. The fighting issue then is whether the work was suitable on September 29, 2014. Mr. Patchin asserts it was no longer suitable. The employer asserts it was suitable. Mr. Patchin points to the harassment he endured from Mr. Richardson, the coworker whose operation of the forklift had caused Mr. Patchin serious injury. The weight of the evidence indicates that the employer had been contemplating separating Mr. Patchin from the employment prior to the suspension and effective discharge on September 11, 2014. Up to September 29, the employer had conditioned Mr. Patchin's return to the employment on his submitting to an unwarranted mental health evaluation. The weight of the evidence supports the conclusion that Mr. Patchin had good cause for refusing to return to the employment under such circumstances. Mr. Patchin's refusal to return to work at the end of September 2014 did not disqualify him for unemployment insurance benefits.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that Mr. Patchin had been able to work and available for work since he established his claim for benefits.

**DECISION:**

The October 14, 2014, reference 02, decision is affirmed. The claimant had good cause for refusal an offer of employment on September 29, 2014. The claimant has been able and available for work since he established his claim. The claimant is eligible for benefits, provided he meets all other eligibility requirements.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css