

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA L MCBURNEY
Claimant

APPEAL NO. 12A-UI-12427-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MTM ENTERPRISES UNLIMITED INC
AAMCO TRANSMISSIONS**
Employer

OC: 09/02/12
Claimant: Respondent (4-R)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting Part-time Employment

STATEMENT OF THE CASE:

The employer filed an appeal from the October 15, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 13, 2012. Claimant participated. Employer participated through owner Mark McCoy. Proposed witness Mason McCoy did not participate. The parties waived fact finding and notice on the separation issue.

ISSUES:

Did claimant refuse a suitable offer of work and if so, was the refusal for a good cause reason?

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time on occasional Saturdays as a technician at \$8.00 per hour plus \$6.00 per hour for bonus hours and was separated from employment on August 25. His last day of work was August 8, 2012. He also worked full time at The Stone Works. He was uncertain about his status there because of layoff discussions. On August 22 McCoy offered him full-time, work with a raise on bonus hours to \$7.00, Tuesday through Saturday from 8:00 a.m. to 5:00 p.m. He said he was still employed but would think about it and get back to him. McCoy also mentioned that work was available the next Saturday, August 25. On the previous two Saturdays manager Dave told claimant he did not need him and would call him when work was available. Dave did not call him and he did not call Dave or either McCoy about his employment status. Claimant did not respond or report for work thereafter. Claimant received a voice mail message from McCoy but did not listen to it or call him back. Continued work was available. He did not get back in touch with McCoy about the offer even after his separation from The Stone Works because of driver's license and related transportation issues. He now has a work permit but is unsure if it is valid as he has civil penalties to pay before can it can be renewed.

The administrative record shows that the claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether he is otherwise monetarily eligible. The parties were going to discuss the possibility of resuming the employment relationship at the conclusion of the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did decline an offer of work because he was not available.

Iowa Code § 96.5-3-a 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.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code § 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 section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 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 section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, he is not disqualified from receiving benefits, but is not eligible for benefits effective September 2, 2012. Benefits are withheld until such time as claimant makes himself available for work.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left this part-time employment without good cause attributable to the employer, but has not requalified and the record is unclear as to whether claimant is otherwise monetarily eligible after deletion of these wage credits.

Iowa Code § 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.

Iowa Code § 96.5-1-g 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. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

Inasmuch as claimant did not return to work on the Saturdays work was available to him or otherwise contact the employer about his employment status, the separation is disqualifying. The claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

DECISION:

The October 15, 2012 (reference 02) decision is modified in favor of the appellant. Claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective September 2, 2012 until such time as the claimant makes himself available for work. He also voluntarily left the part-time employment without good cause attributable to the employer and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The account of this employer shall not be charged.

REMAND: The monetary eligibility issue after the quit of this part-time employment (employer account number 372347) as delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css