

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-04289-H
OC: 02-29-04 R: 03
Claimant: Appellant (5)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Refusal of Work
Section 96.5-1 - Quit

STATEMENT OF THE CASE:

Cory Saville filed an appeal from a decision dated April 2, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa, on May 19, 2004. The claimant participated on his own behalf. Domino's Pizza participated by Co-Owners Michael Cole and Stacy Cole, and Iowa City Store Manager Douglas Marchik. The employer was represented by Attorney Gerald Kucera. Exhibit A was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Cory Saville was employed by Domino's Pizza from August 2000 until February 28, 2004. He was the full-time manager of the Coralville, Iowa, store. Mr. Saville had been placed on suspension for one week from February 21 until February 28, 2004. When he returned from suspension Co-Owner Michael Cole notified him that the Coralville store was closing but he would be transferred to the Iowa City store. The stores were approximately three miles apart.

Mr. Saville informed Mr. Cole that he no longer wished to continue working for Domino's Pizza. He had been dissatisfied with the way in which the business was being operated and he felt that transferring to the Iowa City store as an assistant manager would interfere with future career opportunities with Domino's Pizza.

The claimant would have been working the same number of hours per week and being paid the same wages as he had as the store manager of the Coralville location. There would have been a slight change in hours and he would have been responsible for the special events and school program which duties still entailed taking orders and overseeing deliveries as he had as the store manager in Coralville.

There had been a few instances in the past where the claimant's paycheck had been returned for insufficient funds. This was due to the internal revenue service levying on the employer's bank account. The employer had not been aware of the levy until after it had occurred but did make good on all of the claimant's paychecks. At no time did Mr. Saville notify the employer he would quit due to the paychecks being returned or for any business practices with which he disagreed. Continuing work was available to him but he elected to resign.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is disqualified as a result of a refusal of work. The judge concludes he is not.

Iowa Code Section 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.

The fact-finding decision was incorrectly adjudicated as a refusal of work. This was incorrect as there was a separation from an existing employment and not a refusal of work. Therefore, disqualification may not be imposed as a result of a refusal of work.

The next issue is whether the claimant is disqualified as a result of his separation from employment. The judge concludes he is.

Iowa Code Section 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.

Continuing work was available to Mr. Saville had he elected to remain in the employ of Domino's Pizza. The store of which he had been manager had to close due to business reasons but a job at the same hours and wages, and roughly the same duties, was available to him at a store located only a few miles distant. This does not constitute any substantial change in the contract of hire and good cause does not exist for that reason. The claimant's other reasons for quitting included paychecks being returned for insufficient funds, but all of those checks were made good by the employer. In addition, he disagreed with the manner in which the employer was running its business, but he never brought these concerns to the attention of either of the owners. He did not indicate that he would quit unless his concerns were addressed in the appropriate manner as required by Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996). The record establishes that the claimant did not have good cause attributable to the employer for quitting and the claimant is disqualified.

DECISION:

The representative's decision of April 2, 2004, reference 01, is modified without effect. Cory Saville is disqualified from receiving unemployment benefits as he quit work without good cause attributable to the employer. He is disqualified until he has requalified by earning ten times his weekly benefit amount provided he is otherwise eligible.

tjc/kjf