

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CODY D CAMPBELL
Claimant

APPEAL NO. 18A-UI-05822-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PURE REHABILITATION
Employer

OC: 04/29/18
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(1) – Layoff
Iowa Code Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

Cody Campbell filed a timely appeal from the May 18, 2018, reference 01, decision that denied benefits effective April 29, 2018, based on the Benefits Bureau deputy's conclusion that Mr. Campbell was not available for work within the meaning of the law. After due notice was issued, a hearing was held on June 12, 2018. Mr. Campbell participated. Misty Haffner-Szynskie represented the employer and presented additional testimony through Chandal Summers. The parties waived formal notice on the following issues: whether the claimant was laid off, whether the claimant was discharged for misconduct in connection with the employment, whether the claimant voluntarily quit with or without good cause attributable to the employer, and whether the claimant refused an offer of suitable work without good cause. Exhibits 1 through 4, A through I, and Department Exhibits D-1 through D-4 were received into evidence.

ISSUES:

Whether Mr. Campbell separated from the employment for reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

Whether Mr. Campbell has been able to work and available for work within the meaning of the law since he established his original claim for unemployment insurance benefits.

Whether Mr. Campbell refused an offer of suitable work on April 30, 2018 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Misty Haffner-Szynskie owns and operates Pure Rehabilitation, an outpatient clinic and home health care provider located in Clarinda. Ms. Haffner-Szynskie is a licensed occupational therapist. Cody Campbell was employed by Pure Rehabilitation as a full-time licensed physical therapy assistant (PTA) until April 27, 2018, when Ms. Haffner-Szynskie laid him off from his full-time employment. Mr. Campbell had started his employment in January 2017 as a part-time physical therapy assistant, but transitioned to full-time work hours in April 2017. Once Mr. Campbell began working full-time for the employer, his work hours were 8:30 a.m. to 4:30 p.m., Monday

through Friday. Mr. Campbell continued to work under this same schedule until April 27, 2018. Mr. Campbell's hourly wage from the start of the employment was \$33.00. Ms. Haffner-Szynskie and a physical therapist were Mr. Campbell's supervisors throughout the employment.

On April 27, 2018, Ms. Haffner-Szynskie summoned Mr. Campbell to a meeting. It was during that meeting that Ms. Haffner-Szynskie notified Mr. Campbell of the layoff. During that meeting, Ms. Haffner-Szynskie provided Mr. Campbell with a typed memo that stated as follows:

Dear Cody Campbell,

I regret to inform you that you are being laid off from your position as PTA effective 4/27/18. The layoff should be considered permanent.

A recent economic downturn and restructuring of services offered requires that Pure Rehabilitation lays off employees.

The layoffs are not related to individual performance.

The following company property must be returned by 4/27/18:

- Laptop
- Ipad
- Nurses bag
- Clinic key
- Any other clinic property you have in your possession

Thank you for your contribution to the company.

My best wishes for success in your future endeavors.

Sincerely,
Misty Haffner-Szynskie

I am very aware of a debt I owe to you and plan to repay at minimum \$200 per week.

During the April 27 meeting, Ms. Haffner-Szynskie asked Mr. Campbell whether he would be willing to return to perform physical therapy assistant work in the future on an on-call basis. Ms. Haffner-Szynskie told Mr. Campbell that she would give him "a couple hours here and there" when she could. Mr. Campbell said that he would think about it. Ms. Haffner-Szynskie told Mr. Campbell that the on-call work would pay \$5.00 less per hour than the \$33.00 hourly wage he had enjoyed up to that point. During the April 27 meeting, Mr. Campbell and Ms. Haffner-Szynskie discussed another physical therapy assistant's anticipated no-call/no-show on Monday, April 30, 2018.

During the employment, Mr. Campbell loaned substantial funds to Ms. Haffner-Szynskie so that she could continue to operate her business. In the fall of 2017, Mr. Campbell loaned Ms. Haffner-Szynskie \$20,000.00. Ms. Haffner-Szynskie needed the loan due to cash-flow problems at the clinic. Ms. Haffner-Szynskie has repaid \$2,300.00 of the \$20,000.00 loan. Also in the fall of 2017, Mr. Campbell and/or his father, Dennis Campbell, fronted \$1,596.00 to the clinic so that clinic staff could attend a professional conference. The clinic has not repaid the conference-related expense. At multiple points during the employment, Ms. Haffner-Szynskie encouraged and/or requested that employees, including Mr. Campbell, defer cashing payroll checks due to the employer's cash flow problems.

In response to being laid off from his full-time employment, Mr. Campbell established an original claim for unemployment insurance benefits that was effective April 29, 2018 and commenced

his search for new, full-time employment. Mr. Campbell has thus far made weekly claims for each of the weeks between April 29, 2018 and June 9, 2018. Mr. Campbell has made two weekly employer contacts. Those contacts have generally included submission of a resume to the prospective employer. Mr. Campbell has looked for work both within his field and outside his field.

At 6:14 a.m. on Monday, April 30, 2018, Ms. Haffner-Szynskie sent Mr. Campbell a text message asking whether he wanted to work that day. The other physical therapy assistant had not appeared for work that day. At 8:04 a.m., Mr. Campbell sent a text message response indicating that he was working on his house that day and would be running to Omaha for additional supplies. However, Mr. Campbell did not intend to work on his house that day. Instead, Mr. Campbell had a scheduled appointment with a U.S. Navy recruiter in Omaha. Mr. Campbell was not eager to accept work for \$5.00 less per hour than his previous wage. When Mr. Campbell sent his message, Ms. Haffner-Szynskie promptly replied, "All good. Got it covered. Thx anyway." The employer did not contact Mr. Campbell with further offers.

On May 24, 2018, Mr. Campbell's father, Dennis Campbell, went to Pure Rehabilitation to inquire about a Paid Time Off (PTO) payout for Cody Campbell and for Monica Radcliff. Ms. Radcliffe had also been employed by Pure Rehabilitation and was Cody Campbell's girlfriend. Before the elder Mr. Campbell entered the clinic, Cody Campbell confirmed with a clinic employee that Ms. Haffner-Szynskie was at the clinic. Cody Campbell did not accompany his father into the clinic. During Dennis Campbell's meeting with Ms. Haffner-Szynskie, he spoke to Ms. Haffner-Szynskie in a stern voice. On May 25, 2018, Ms. Haffner-Szynskie sent Cody Campbell a memo that stated as follows: "This letter is to inform you of your termination from Pure Rehabilitation effective this date. Due to our zero tolerance for harassment you will not be eligible for rehire."

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The evidence in the record establishes that the employment ended on April 27, 2018, when the employer laid off Mr. Campbell from his full-time employment. The layoff does not disqualify Mr. Campbell for unemployment insurance benefits or relieve the employer's account of liability for benefits. Contrast Iowa Code Section 96.5(1) (regarding voluntary quits without good cause attributable to the employer) and Iowa Code Section 96.5(2)(a) (regarding discharges based on misconduct in connection with the employment).

The evidence establishes that Mr. Campbell was not employed by Pure Rehabilitation on May 24, 2018, when his father confronted Ms. Haffner-Szynskie. According, nothing about that interaction impacts on Mr. Campbell's eligibility for benefits or the employer's liability for benefits. In light of the April 27, 2018 layoff, the employer's May 25, 2018 memo purportedly discharging Mr. Campbell from the employment is without merit or impact.

The administrative law judge will next address the employer's contact with Mr. Campbell on April 30, 2018 about performing work that day. Iowa Code § 96.5-3-b 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. 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(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 § 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.

Iowa Administrative Code rule 871-24.24(1)(a) provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact

and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The weight of the evidence establishes a bona fide offer of work on April 30, 2018 and a definite refusal of the offered work. The offer and refusal occurred during the first week of Mr. Campbell's claim. The offer was for one day's work at a wage \$5.00 less per hour than Mr. Campbell had made since his January 2017 start in the employment. The employment offered was not suitable work within the meaning of the law. The employment was not suitable because the offered wage was substantially less than the prevailing wage of \$33.00. The employment was not suitable because of the employer's substantial, unpaid business-related debt owed to Mr. Campbell and because of the previous issues with late payment of wages. For these reasons, Mr. Campbell had good cause for refusing the unsuitable work. Mr. Campbell's good cause for refusing the April 30, 2018 offer was also based on his scheduled appointment with the U.S. Navy recruiter, a prospective employer. Mr. Campbell's April 30, 2018 good cause refusal of unsuitable work would not disqualify him for benefits or relieve the employer's account of liability for benefits.

Finally, the administrative law judge will address the question of whether Mr. Campbell has been able to work and available for work since he established his claim for 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 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".

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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 establishes that Mr. Campbell has indeed been engaged in an active and earnest search for new, full-time employment each week since he established his claim for benefits. Mr. Campbell has made at least two employer contacts per week through submission of resumes and other forms of contact. Mr. Campbell has looked for work within his field and outside his field. Mr. Campbell has been able to work and available for work since he established his claim for benefits.

DECISION:

The May 18, 2018, reference 01, decision is modified as follows. The claimant was laid off from full-time employment effective April 27, 2018. The separation did not disqualify the claimant for benefits or relieve the employer's account of liability for benefits. The claimant refused an offer of unsuitable work on April 30, 2018 for good cause. The work refusal did not disqualify the claimant for benefits or relieve the employer's account of liability for benefits. The claimant has been able to work and available for work during each week since he established his claim for benefits. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs