

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINNA R WATSON**  
Claimant

**APPEAL NO. 15A-UI-09600-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FORTYTEN LLC**  
Employer

**OC: 07/12/15**  
**Claimant: Respondent (3)**

Iowa Code Section 96.5(3) – Refusal of Suitable Work  
871 IAC 24.1(113) – Layoff

**STATEMENT OF THE CASE:**

The employer, Fortyten, L.L.C., doing business as Grounded, filed a timely appeal from the August 17, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, based on an agency conclusion that on June 23, 2015, the claimant did not accept an offer work with Fortyten, L.L.C., but did not have a valid unemployment insurance claim at the time. After due notice was issued, a hearing was held on September 22, 2015. Claimant Tinna Watson participated and presented additional testimony through Bea Davis, Monna Gardalen and Ryan Gardalen. Margaret Solis represented the employer and presented additional testimony through Bruce Frink. Exhibits A and B were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. Administered of law judge took official notice with regard to any agency determination of a successor relationship between the previous business owner and current business owner.

**ISSUES:**

Whether the claimant separated from her employment at Grounded for a reason that would disqualify her for unemployment insurance benefits or relieve the employer liability for benefits.

Whether the claimant refused an offer suitable employment without good cause at a time when she had an active claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tina Watson began her employment at Grounded, a coffee shop and café located in Clarion, in February 2014. At that time the business was owned and operated by Steve and Margaret Simonin. In February 2015, Ms. Watson was promoted to a full-time manager position. Her wage was \$10.00 per hour for regular time and \$15.00 per hour hours beyond 40 per week. Ms. Watson regularly worked 50 hours per week. On June 1, 2015, Mr. Simonin advised his staff, including Ms. Watson, that he had sold the business to Margaret Conlon (now known as Margaret Solis). Mr. Simonin provided the staff with the choice of staying on during the

transition to the new ownership or having him immediately close the store. The transfer of business ownership was to take effect on June 23, 2015. The transfer of the business was structured in such a manner that it was the shares of the limited liability company, Fortyten, that were sold to Ms. Solis and her husband. Ms. Watson and other staff agreed to stay on during the period of transition. Mr. Simonin told Ms. Watson and the other staff that he did not know whether the new business owner would offer employment to the staff. Ms. Watson continued to perform her duties until June 5, 2015. On that day, the businesses main cooler broke down. Mr. Simonin immediately closed the business and laid off the staff, including Ms. Watson.

Between June 1 and June 5, the new business owner, Ms. Solis, had visited the business to begin to familiarize herself with the business operations. During that time, Ms. Solis advised the staff that she intended to operate Grounded as a family business and would not be able to afford the existing staff. While Ms. Solis may have engaged in casual conversation with Ms. Watson about a desire to have her stay on long enough to share her expertise, the discussion did not result in a formal offer of employment or refusal of employment.

Grounded remained closed until June 23, 2015, when Ms. Solis reopened the business. Sometime in June, Ms. Solis telephoned Ms. Watson's cell phone number with the intent of discussing potential employment. Ms. Solis left a voicemail message, but Ms. Watson did not respond. The only additional contact between Grounded and Ms. Watson was a text message from Ms. Solis' daughter-in-law on June 30 asking whether Ms. Watson knew a particular spice recipe. Ms. Watson responded that she did not.

Ms. Watson established a claim for unemployment insurance benefits that was effective July 12, 2015 and has received benefits.

Workforce development records indicate that the new business owner assumed use of the same employer account utilized by the previous business owner.

## **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 Ms. Watson separation from Fortyten, L.L.C., under the previous owner, occurred on June 5, 2015, when Steve Simonin laid her off. The layoff would not disqualify Ms. Watson for unemployment insurance benefits or relieve the employer account of liability for benefits. Contrast Iowa Code section 96.5(1) (regarding voluntary quits) and Iowa Code section 96.5(2)(a) (regarding discharges).

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.

Iowa Admin. Code r. 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, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening 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 fails to establish that any bona fide offer of employment was made to Ms. Watson by the new business owner, Ms. Solis. If the evidence had indicated otherwise, any such offer would have been made prior to the effective date of the claim for unemployment insurance benefits and, for that reason would not disqualify Ms. Watson for unemployment insurance benefits. Ms. Watson remains eligible for benefits provided she meets all other eligibility requirements. The employer account may be charged for benefits paid to Ms. Watson.

**DECISION:**

The August 17, 2015, reference 01, decision is modified as follows. The claimant was laid off effective June 5, 2015. The layoff did not disqualify the claimant for unemployment insurance benefits or relieve the employer account of liability for benefits. There was no bona fide offer of employment from the new business owner and no refusal by the claimant. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer account may be charged for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css