

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER M BREITBACH**  
Claimant

**APPEAL NO. 16A-UI-00410-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYNN CO INC**  
Employer

**OC: 01/18/15**  
**Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal  
Section 96.3-7 – Recovery of Overpayment of Benefits  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 7, 2016, reference 01, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on February 2, 2016. Claimant participated personally, without witness David Potter. Employer participated by Jeff Flynn.

**ISSUES:**

Whether claimant refused to accept a suitable offer of work?

Whether claimant was overpaid benefits?

Whether claimant is able and available for work?

Was the separation a layoff or a voluntary quit without good cause attributable to employer?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was laid off work from his seasonal position on or around November 20, 2014. After claimant was laid off he decided to go back to school. Claimant told employer during the time of layoff that he would be attending school.

Before the time when claimant was to be called back to work, claimant alerted employer that he was not going to be attending school, and he was free to come back to work. Later, in July, claimant made a personal appearance at employer's office asking if there was any work available for him. Employer did not respond to these inquiries with a job.

Employer saw that claimant was drawing unemployment during the time when there was work available for claimant. Employer did not call claimant to ask if he wished to return to work.

Claimant stated that he was actively searching for work throughout the time period when he was not working.

Claimant has received benefits in this matter. Claimant received those benefits from January 2015 through August 2015. Claimant stated he had not filed earlier as he was trying to conserve his money, as he was going to need benefits if he went to school.

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

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".

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 Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work. Claimant was never offered work from employer although he expressed an interest to return to work. Claimant remained able and available to work throughout the time when employer did not have a seasonal layoff. Claimant's job separation occurred because of employer's layoff. Claimant was able and available for work prior to employer ending its layoff.

As claimant is qualified for benefits, claimant was not overpaid benefits in this matter.

**DECISION:**

The decision of the representative dated January 7, 2016, reference 01 is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/pjs