

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

**Appeal Number: 17IWDUI110
17IWDUI135**

OC: 8/14/16

Claimant: Appellant (2)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

CLAIMANT:

**ROGER HAYWARD
612 NW LINDEN ST
ANKENY, IA 50023-1441**

EMPLOYER:

**HERMAN M. BROWN CO.
CINDY SHOVEIN
5633 HWY 13 W
SAVAGE, MN 55378**

IOWA WORKFORCE DEVELOPMENT:

JONI BENSON, IWD

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 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 the department. 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)

December 15, 2016

(Decision Dated & Mailed)

STATEMENT OF THE CASE

Roger Hayward and his former employer, Herman M. Brown Co., have both filed appeals from decisions issued by Iowa Workforce Development (the Department). In the first decision, dated September 1, 2016 (reference 01), the Department determined that Hayward was eligible to receive unemployment insurance. The decision states that Hayward did not accept an offer of work with Herman M. Brown Co. on August 12, 2016, however, he did not have a valid unemployment insurance claim for benefit at that time. Herman M. Brown Co. filed a notice of protest in response to the decision on September 7, 2016. In the second decision, dated September 13, 2016 (reference 03), the Department determined that Hayward was ineligible for unemployment insurance benefits. The decision states that Hayward voluntarily quit his employment on August 12, 2016 due to a work-related medical condition and has failed to meet all related requirements. Hayward appealed this decision via email on October 12, 2016.

The appeals were transmitted from Workforce Development to the Department of Inspections and Appeals to schedule a contested case hearing. A telephone hearing was held on November 18, 2016 before Administrative Law Judge Emily Kimes-Schwiesow. Attorney Marlon Mormann represented claimant Roger Hayward, who appeared and testified. Troy Johnson, CFO, and Chuck Gallagher, general manager, appeared for the employer and presented testimony. Exhibits 1 and 2 consisting of documents from the administrative file and described on the record were admitted into evidence. Claimant's Exhibits A through D were also admitted into the record as evidence.

ISSUES

1. Whether the Department correctly determined that the claimant was ineligible to receive unemployment insurance benefits.
2. Whether the Department correctly determined that the claimant was able and available for work.
3. Whether the Department correctly determined that the claimant refused to apply for or accept an offer of suitable work.

FINDINGS OF FACT

Roger Hayward filed a claim for unemployment insurance benefits with an effective date of August 14, 2016. The claim was filed after he ended employment with Herman M. Brown Co.

Hayward began working for Herman M. Brown Co. in 2003. He was a field mechanic, a position that paid \$28.55 per hour at the time he separated from employment. Hayward sustained an injury on November 19, 2014 which resulted in work restrictions. He continued to work at a rate of \$28.55 per hour doing light duty activities including answering phone calls, filing, and looking up machine information for personnel in the field. On August 12, 2016, Chuck Gallagher informed Hayward that the light duty work he had been performing was no longer available. He was unable to meet the physical requirements of a field mechanic. Gallagher told Hayward that the business would open a position in the parts department that would be available to him. Hayward indicated he would consider the new position. On the next business day, August 15, 2016, Hayward had his desk packed up. He met with Gallagher and informed him that he would not take the parts department position because it would be a pay cut. The parts department job paid \$24.21 per hour. Gallagher testified at hearing that Hayward understood he was resigning if he refused to be transferred to the parts department position. Hayward's testimony confirmed that he declined the transfer because of the pay cut. He did not dispute that he was physically incapable of meeting the job requirements of a field mechanic. Hayward contends that his refusal to accept the new position did not constitute a resignation, he believes it was a lay off. Following the conversation with Gallagher, Hayward promptly went home and applied for unemployment insurance benefits. (Hayward testimony; Gallagher testimony).

Subsequently, Hayward has applied for various jobs including security guard, toll booth

operator, and maintenance shop manager. He has received some job offers, but has declined all opportunities because the rate of pay is not high enough. He testified he is able and available for work and is actively seeking employment. (Hayward testimony).

As set out in the statement of the case, the Department has entered two conflicting decisions regarding Mr. Hayward. The first decision, dated September 1, 2016, determined that Hayward was eligible to receive unemployment insurance. The decision states that Hayward did not accept an offer of work with Herman M. Brown Co. on August 12, 2016, however, he did not have a valid unemployment insurance claim for benefit at that time. The second decision, dated September 13, 2016, the Department determined that Hayward was ineligible for unemployment insurance benefits. The decision states that Hayward voluntarily quit his employment on August 12, 2016 due to a work-related medical condition and has failed to meet all related requirements. (Exh. 1, 2).

REASONING AND CONCLUSIONS OF LAW

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.

There is an exception related to a voluntary quit because of a medication condition. Iowa Code section 96.5(1)(d) provides the following:

- d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The central dispute in this case relates to whether Hayward voluntarily resigned his employment with Herman M. Brown Co. Hayward asserts that he did not resign during his meeting with Gallaher on August 15, 2016 and Gallagher contends that he did. A voluntary quit requires an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.¹ Evidence in the record supports the conclusion that Hayward did voluntarily quit. There is no dispute that he was physically incapable of meeting the physical requirements of a field mechanic. He had

¹ *Peck v. Employment Appeal Board*, 492 N.W.2d 438, 440 (Iowa App. 1992) (citing *Local Lodge No. 1427, International Ass'n of Machinists & Aerospace Workers v. Wilson Trailer Co.*, 289 N.W.2d 608, 612 (Iowa 1980)).

not been performing those duties for nearly two years. On August 12, 2016, Hayward was informed that he could no longer work as a field mechanic and would be transferred to a different position within the company, one with work requirements he was capable of doing. Hayward took the weekend to consider the transfer. On Monday morning he had already packed up his workspace before speaking to Gallagher. He indicated he would not accept the new position because it didn't pay enough. It is apparent that he knew this would end his employment with the company. Hayward promptly exited the building and applied for unemployment insurance benefits.

In order to receive unemployment insurance benefits, an individual must be able to work, available for work, and be earnestly and actively seeking work.² The Department's regulations mandate that an individual be physically and mentally able to work in some gainful employment. In order to be determined able to work,

the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.³

The burden is on the claimant to establish that she is able and available to work.⁴

Hayward testified at hearing that he is able and available for work and is seeking employment. He reported applying for jobs such as security guard, toll booth operator, and maintenance shop manager. All jobs that would be achievable with his existing physical limitations. Hayward reported that he has received job offers for some of these positions, but declined them because the pay was too low. He acknowledged that most jobs he is capable of doing and has applied for are lower paying, but he will not take them.

The evidence in the record indicates Hayward is able to work in the labor market generally, though he is not capable of working in his customary occupation. Despite this reality, he continues to refuse all jobs he is capable of doing because they do not pay as much as the jobs he cannot perform. For this reason, I conclude that Hayward is able to work but has refused offers of comparable work. The Department's decision disqualifying Hayward from receiving benefits is affirmed.

DECISION

Iowa Workforce Development's decision dated September 1, 2016 (reference 01), is REVERSED. Iowa Workforce Development's decision dated September 13, 2016 (reference 03), is AFFIRMED.

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² Iowa Code § 96.4(3) (2015).

³ 871 Iowa Administrative Code 24.22(1)(b).

⁴ 871 IAC 24.22.