IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARK J KRIEGEL
Claimant

VAN WYK FREIGHT LINES INC
Employer

APPEAL NO: 10A-UI-05099-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/03/10
Claimant: Appellant (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Mark J. Kriegel (claimant) appealed a representative's March 31, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits with regard to a refusal of work from Van Wyk Freight Lines, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2010. The claimant participated in the hearing. Marcy Van Wyk appeared on the employer's behalf and presented testimony from two other witnesses, Dick Clark and Loretta Van Wyk. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on March 15, 2005. He worked full time primarily as a pick-up and delivery driver. His last day of work was on or about December 30, 2009. As determined in a previously issued representative's decision issued on January 29, 2010 (reference 01), the claimant quit on January 1, 2010 due to a change in his contract of hire, specifically, a change in his position from full time to part time. His hourly rate as of December 30 was $13.81. He established an unemployment insurance benefit year effective January 3, 2010. His weekly benefit amount was calculated to be $388.00, based on an average weekly wage in the high quarter of his base period of $827.00.

On January 8, 2010 the employer again offered the claimant part-time work. The schedule was somewhat unset, but would be two or three days per week for about eight or ten hours per day. The employer offered the claimant his prior rate of pay, $13.81 per hour, but the claimant responded he needed about $19.00 or $20.00 per hour, since he would not be getting benefits. When the employer responded it could not pay this, the claimant declined the offer.

On February 23 Mr. Clark, the safety director and head of human resources, contacted the claimant and left him a message offering him a full-time position, which would have been 40 to

50 hours, doing essentially the same duties as the claimant had previously performed, also indicating that there was a choice of shifts available; the claimant would be returned to his prior wage and benefits. The claimant received the offer. On February 24, rather than responding by returning the call to Mr. Clark, the claimant called Loretta Van Wyk. He felt she was responsible for his employment being cut from full time to part time at the end of December 2009, and felt it was due to comments he had made about changes in the employer's overtime payment schedule, and a response made by the employer that he should consider himself fortunate to even have a job. He was overtly angry in the conversation with Ms. Wyk, and was rude and abusive towards her, saying that he did not know why he would want to return to work there because the employer treated him like "s - - -," and called her a ""b - - - -." She then responded that he was not welcome to return.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work other than for good cause.

Iowa Code § 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 first offer of employment made to the employer on January 8 was not monetarily suitable. At that time, the claimant was in his first week of his unemployment insurance claim. In order to be monetarily suitable under the statutory formula, the offer would have had to have been able to provide the claimant a weekly wage of at least 100 percent of $827.00. At the hourly wage of $13.81, this would have required the employer provide about 60 hours of work, and at best the employer was offering half that amount.

The offer of employment made on February 23 was monetarily suitable. At that time the claimant was in his eighth week of his unemployment insurance claim. Under the statutory formula the offer would have had to have been able to provide the claimant a weekly wage of at least 75 percent of $827.00, or about $620.00. At the hourly wage of $13.81, this would have required the employer provide about 45 hours of work. The position offered to the claimant was within this range, and so was monetarily suitable.

The claimant's combative communication with Ms. Van Wyk on February 24, was in effect a refusal by forcing the employer to decline to allow the claimant to return to work. Where a claimant acts in such a manner as to discourage a prospective employer from hiring him, he is deemed to have refused suitable work. 871 IAC 24.24(12). The only issue then remaining is whether he had good cause for refusing.

871 IAC 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.

The employment offered was comparable his prior position and was within the purview of the usual occupation of the claimant. While the claimant did previously quit the employment, it was not because of an issue as to his treatment by the employer per se, but because his position was being cut from full time to part time. By making the full-time offer to him, the conditions which caused the claimant to quit were no longer still in existence.

The claimant made an argument that he felt the offer was not bona fide, but was merely an attempt on the part of the employer to find a way to avoid paying him unemployment insurance benefits. However, he has presented only speculation, not evidence, to that effect, which is not sufficient in the face of an apparently bona fide decision on the part of the employer to offer the claimant new employment. The claimant did not have good cause for refusing the suitable offer of work.

DECISION:

The representative's March 31, 2010 decision (reference 02) is affirmed. The claimant did refuse a suitable offer of work without good cause. As of February 24, 2010, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

_____
Lynette A. F. Donner
Administrative Law Judge

_____
Decision Dated and Mailed

ld/css