

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN M FRICKE
Claimant

APPEAL NO: 09A-UI-10784-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC
Employer

OC: 03/29/09
Claimant: Respondent (1/R)

Section 96.3-5 – Business Closing
Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Rembrandt Enterprises, Inc. (employer) appealed a representative's July 21, 2009 decision (reference 01) that denied Dustin M. Fricke's (claimant) request to have his claim redetermined as a business closing. The employer did not appeal the denial of business closing benefits, but instead raised the issue that claimant was not working for the employer because he did not pass a drug screen test. Instead of remanding this issue to the Claims Section, Appeals Section personnel scheduled a hearing on the issue of whether the claimant refused to accept suitable work or whether he was able to and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2009. The claimant participated in the hearing. Darla Thompson, a human resource representative, appeared on the employer's behalf. 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.

ISSUES:

Did the claimant refuse an offer of suitable work?

Is the claimant able to and available for work?

Should the claimant's request for a business closing determination be denied?

FINDINGS OF FACT:

The claimant had been working for Golden Oval Eggs, LLC, as a pest control specialist. The employer acquired Golden Oval Eggs, LLC, on March 30, 2009. According to the computer records, Golden Oval Eggs' unemployment insurance account was transferred to the employer.

Employees who had been working at Golden Oval Eggs had to complete employment applications to work for the employer. All previous employees also had to submit to a "pre-employment" drug test. If an employee did not complete an employment application, the

employee would not be working for the employer. Employees also had to have a negative drug test to continue the employment relationship with the employer.

After the claimant completed an employment application, the employer made a contingent offer of employment to the claimant. This meant that if the claimant passed the drug test, he still had a job. If he did not pass the drug test, the employer would withdraw its offer of employment.

The claimant submitted to a drug test and learned the results on March 23, 2009. A doctor contacted him about the results of the test, which was positive for a tested substance. The doctor told the claimant he could have the split sample tested at another laboratory, but the claimant would have to pay the costs of the second test. The claimant did not receive anything in writing from the employer that he could have the split sample tested at another laboratory.

When the employer learned the drug test was positive, the employer withdrew the claimant's offer of employment. As a result, the claimant did not have continued employment as the result of Rembrandt Enterprises, Inc. acquiring Golden Oval Eggs LLC.

REASONING AND CONCLUSIONS OF LAW:

The claimant was working for Golden Oval Eggs, LLC, when the employer acquired the business as of March 30, 2009. The claimant could have remained employed, if he had not had a positive drug test. Under the facts in this case, the claimant completed the necessary employment application and submitted to the requested drug test. The facts do not establish that he refused an offer of suitable work. Iowa Code section 96.5-3-a. Instead the employer effectively discharged him or discontinued his employment by revoking its offer of continued employment. Since the issue of the claimant's employment separation was not noticed on the hearing notice, this issue and the issue of whether the employer, Rembrandt Enterprises, Inc., timely protested is remanded to the Claims Section to investigate and make a written determination.

To be disqualified from receiving unemployment insurance benefits, the employer must discharge an employee for disqualifying misconduct. In this case the employer must establish that the claimant was discharged for disqualifying misconduct by meeting all the requirements of Iowa Code section 730.5.

Since the employer acquired Golden Oval Eggs LLC and continued operating the business, the business did not close and the claimant is not eligible for business closing benefits. Iowa Code section 96.3-5.

DECISION:

The representative's July 21, 2009 decision (reference 01) is affirmed. The claimant is not eligible for business closing benefits. When the employer rescinded the offer of continued

employment, the employer effectively discharged the claimant. Since the issue of employment separation was not noted on the hearing notice, this issue and the issue of whether the employer made a timely protest is remanded to the Claims Section to determine. This decision does not change the status of the claimant's eligibility to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs