

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON SCHMIDT
Claimant

FARM FISK & HOME INC
Employer

APPEAL 16A-UI-13411-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
Claimant: Appellant (4R)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.19 – Employer – Employee Relationship
Iowa Code § 96.5(3)A – Failure to Accept Work
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 7, 2016 (reference 02) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits due to him voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on February 9, 2017. The claimant, Brandon Schmidt, participated personally. The employer, Farm Fisk & Home Inc., participated through witnesses Janelle Regan and Paul Fisk. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Whether claimant is considered unemployed with respect to this entity?
Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?
Is claimant able to work and available for work?

FINDINGS OF FACT:

Claimant was employed by Second Wind Development I (hereinafter referred to as "True Value") until August 31, 2016. On August 31, 2016 claimant met with the owner of True Value and was told that the company was being sold to Fisk Farm & Home Inc. (hereinafter referred to as "Fisk"). In this same meeting claimant also met with Ms. Regan. Claimant was given an application for employment with Fisk and was told by Ms. Regan that everything would remain the same. His specific rate of pay, schedule, part-time status and breaks were not discussed.

Claimant had been working for True Value as a part-time sale associate. He was paid \$11.00 per hour and worked six ten-hour days per two week period. Claimant was given one thirty minute break period per ten-hour shift.

In August of 2016 claimant suffered from a work-related back injury when he was carrying a lawnmower. Claimant visited his own physician. He was required by True Value to visit with the company's nurse practitioner, which he did. He also filed a worker's compensation claim. He did not further pursue his worker's compensation claim. He was not given any written restrictions from either his physician or the company's nurse practitioner. However, he did speak to the owner of True Value about possible light duty work or additional breaks because he was standing on concrete for ten hours as part of his job duties. He was told by True Value that they would work with him regarding this. His half hour break times did not change.

During the August 31, 2016 meeting claimant did not discuss and this employer was not aware of the work-related injury or the worker's compensation claim. This employer was also not aware of claimant's concerns regarding working ten hours with only one half hour break.

On September 1, 2016 claimant met with Mr. Fisk and told him that he did not intend to work for Fisk. Claimant never worked as an employee for Fisk and never received any wages as an employee of Fisk. He never completed the application for work that was given to him by Fisk. Claimant decided he could not work for Fisk because his body could no longer tolerate standing on concrete for ten hours per day with one half hour break.

There has been no initial investigation and determination regarding claimant's separation from True Value (Second Wind Development I account number 506190-000). That separation issue will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit work from this employer and that claimant was never an employee of this employer. Claimant did not fail to accept a suitable offer of work because no offer of work was actually communicated to claimant. However, claimant did fail to complete an application for work with Fisk due to his previous work-related injury.

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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Since no specific offer of work was actually made, claimant did not refuse an offer of suitable work. However, claimant testified the reason claimant did not apply for work with Fisk was due to his inability to continue working on concrete for ten-hour days with only one half-hour break.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code section 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".

Claimant is not disqualified from receiving benefits based upon his separation from Fisk since he was never employed by this employer and no separation occurred. Claimant did not refuse an offer of suitable work since he was not able to and available for work. The claimant was not able to and available for work due to his back injury.

DECISION:

The December 7, 2016 (reference 02) unemployment insurance decision is modified in favor of appellant. Claimant did not voluntarily quit employment with Fisk as he was never an employee of Fisk. Claimant did not fail to accept a suitable offer of work. Claimant is not able to and available for work due to his back injury. Benefits are withheld effective August 28, 2016, until such time as the claimant demonstrates that he is able to and available for work.

REMAND: The issue of claimant's separation from Second Wind Development I (account number 506190-000) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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