IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MATTHIAS M BOYD
Claimant

ELS OF FLORIDA INC
Employer

APPEAL NO. 17A-UI-11393-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/08/17
Claimant: Appellant (4)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.5(1)(g) – Requalification

STATEMENT OF THE CASE:

Matthias Boyd filed a timely appeal from the October 31, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Boyd voluntarily quit on September 6, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 28, 2017. Mr. Boyd participated. Jim Clyde represented the employer and presented additional testimony through Calette Green. The parties waived formal notice on the issue of whether Mr. Boyd had refused an offer of suitable work without good cause on September 6, 2017. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-11394-JTT. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the Agency's administrative record of Mr. Boyd's quarterly wages (WAGEA) as reported to Iowa Workforce Development by his employers.

ISSUES:

Whether Mr. Boyd requalified for unemployment insurance benefits subsequent to his April 12, 2017 separation from ELS of Florida, Inc./Labor Finders.

Whether there was a separation from employment with Labor Finders on September 6, 2017.

Whether Mr. Boyd refused an offer of suitable work without good cause on September 6, 2017.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Matthias Boyd established an original claim for benefits that was effective October 9, 2016. Workforce Development set Mr. Boyd's weekly benefit amount in connection with that claim at $447.00. Mr. Boyd established an "additional claim," effective September 10, 2017, in connection with the same claim year. Labor Finders, was not a base period employer for purposes of that particular claim year.

Upon the October 7, 2017 expiration of the claimant year that had started October 9, 2016, Mr. Boyd established a new "original claim" and a new claim year that was effective October 8, 2017. Workforce Development set Mr. Boyd's weekly benefit amount for the new claim year at

$455.00. Labor Finders is a base period employer for purposes of the new claim year that started October 8, 2017. Mr. Boyd's base period for purposes of the new claim year consists of the third and fourth quarters of 2016 and the first and second quarters of 2017. Mr. Boyd's highest-earning base period quarter was the third quarter of 2016, during which Mr. Boyd average weekly earnings were $823.88. That translates to an hourly wage of $20.60 for a 40-hour work week.

Mr. Boyd most recently worked for Labor Finders on April 12, 2017 as part of a three-day work assignment. Mr. Boyd did not complete that assignment and did not have any further contact with Labor Finders until September 6, 2017. In the meantime, Mr. Boyd was employed by McGrath Automotive Group, for which employment he was paid wages totaling $9,589.00. That amount was well in excess of the $447.00 weekly unemployment insurance benefit amount applicable to the earlier claim year and the $445.00 weekly benefit amount applicable to the claim year that began October 8, 2017. Mr. Boyd separated from McGrath on July 29, 2017.

On September 6, 2017, at 12:08 p.m., Jim Clyde, Labor Finders Cedar Rapids Branch Manager, telephoned Mr. Boyd to offer him a one-day, eight-hour dishwashing assignment to start at 4:00 p.m. that day. The proposed assignment was at Doubletree in Cedar Rapids. Mr. Clyde told Mr. Boyd that the assignment would pay $8.50 per hour. Mr. Clyde told Mr. Boyd that the work assignment required that Mr. Boyd provide and appear in black shoes and black slacks. Mr. Boyd accepted the assignment under the belief that he would be able to borrow black slacks from his brother or a friend and under the belief that he would be able to locate substitute child care for his ill two-year-old child. Mr. Boyd had not previously performed dishwashing work for Labor Finders, but had worked in other day-labor, manual work jobs for the employer that paid $8.00 to $10.00 per hour.

Though Mr. Boyd told the employer he would accept the assignment, Mr. Boyd did not appear for the assignment. Mr. Boyd was unable to borrow the required black slacks and unable to secure a substitute child care provider for his ill two-year-old child. When Mr. Boyd did not appear for the assignment, Doubletree contacted Labor Finders and spoke with Assistant Manager Calette Green. At about 4:30 p.m., Ms. Green telephoned Mr. Boyd. When Mr. Boyd did not answer, Ms. Green left a voice mail message. Soon thereafter, Mr. Boyd returned the call and spoke briefly with Ms. Green to let her know he could not make the assignment. Ms. Green terminated the call as soon as Mr. Boyd stated he could not appear for the assignment. The parties have had no additional contact outside of unemployment insurance proceedings.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
> c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

> d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

Iowa Code section 96.5(1)g provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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. But the individual shall not be disqualified if the department finds that:
>
> g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.27 provides:

> Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.
>
> This rule is intended to implement Iowa Code section 96.5(1)g.

The evidence in the record establishes only one employment separation. That was the separation that occurred on April 12, 2017. Subsequent to that separation, and before the September 10, 2017 additional claim and the October 8, 2017 new original claim, Mr. Boyd worked in and was paid wages for insured work equal to 10 times his weekly unemployment insurance benefit amount. By doing so, Mr. Boyd requalified for unemployment insurance benefits. In other words, by the time Mr. Boyd filed the September 10, 2017 additional claim on the prior claim year and by the time he established the October 8, 2017 new original claim, his April 12, 2017 separation from Labor Finders no longer had an impact on his eligibility for unemployment insurance benefits. Based on the requalification subsequent to the April 12, 2017 separation, Labor Finders would be relieved of liability for unemployment insurance

benefits in connection with the claim year that began October 8, 2017. That was the only claim year for which Labor Finders had any potential liability as a base employer.

There was no employment and no separation from employment on September 6, 2017. This is because Mr. Boyd did not perform any work for the employer in connection with the September 6, 2017 contact and did not receive any wages from the employer in connection with the September 6, 2017 contact. Instead, the issue that applies to the September 6, 2017 interaction is whether Mr. Boyd's *conduct* indicated a definite refusal of an offer of suitable work without good cause.

In deciding whether a claimant failed to accept suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact and a definite refusal was made by the individual. Iowa Administrative Code rule 871-24.24(1)(a).

Both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year. It is not necessary that the offer or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed. Iowa Administrative Code rule 871-24.24(8).

Determining whether the work offered is suitable and whether there was good cause for refusing such work is determined on a case-by-case basis. Iowa Administrative Code rule 871-24.24(3). A good cause reason for refusing suitable work may disqualify a claimant for benefits if the claimant is determined not to be available for work. *Id.*

Iowa Code section 96.5(3)(a) and (b) addresses work refusals, in relevant part, as follows:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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. …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.
>
> b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
>
> (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
>
> (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
>
> (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

See also Iowa Administrative Code rule 871-24.24(15) (echoing the statute and listing factors to be considered in determining whether offered work is suitable).

Iowa Administrative Code rule 871-24.24(14)(a)(b) provides as follows:

> 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 weight of the evidence establishes a bona fide offer of suitable work and a definite refusal for good cause during the claim year that expired October 7, 2017. The bona fide offer came through the employer's initial phone call to Mr. Boyd on September 6, 2017. The work the employer offered Mr. Boyd was reasonably suitable work under the circumstances. While the $8.50 per hour wage was substantially less than the average wage during his highest earning base period quarter, the September 6, 2017 offer was form a former employer. The offered work was reasonably similar to past day-labor assignments Mr. Boyd had completed for the same employer. The offered wage was within the customary range of Mr. Boyd's prior assignments with the employer and to similar work in the local labor market. The work would not require Mr. Boyd to join a union or refrain from joining a union. There is nothing to suggest the available assignment was the product of a labor dispute. Though Mr. Boyd verbally accepted the one-day dishwashing assignment on September 6, 2017, his subsequent decision not to appear for the assignment and his actual failure to appear for the assignment were sufficient to indicate a definite refusal of the assignment. However, Mr. Boyd had good cause to

refuse the assignment. The assignment was offered "out of the blue" less than four hours prior to the start of the assignment after months of no contact between Labor Finders and Mr. Boyd. The assignment required clothing that Mr. Boyd did not possess and could not obtain on such short notice. Due to the short notice, Mr. Boyd was not able to obtain substitute child care for his sick toddler.

The September 6, 2017 work refusal for good cause did not disqualify Mr. Boyd for unemployment insurance benefits. Mr. Boyd is eligible for benefits in connection with the claim year that began October 8, 2017, and the September 10, 2017 additional claim on the October 9, 2016 original claim, provided he meets all other eligibility requirements. Due to Mr. Boyd's requalification for benefits prior to the October 8, 2017 start of the new claim year, the employer's account shall not be charged for benefits.

DECISION:

The October 31, 2017, reference 03, is modified as follows. The claimant separated from the employer effective April 12, 2017. There was no new employment and no employment separation in connection with the parties' contact on September 6, 2017. The claimant requalified for benefits prior to establishing the claim year that began October 8, 2017, and the September 10, 2017 additional claim on the October 9, 2016 original claim. Based on the requalification, the employer's account is relieved of liability for benefits in connection with the October 8, 2017 new claim year. On September 6, 2017, the claimant refused an offer of suitable work for good cause. The claimant is eligible for benefits in connection with the claim year that began October 8, 2017, and the September 10, 2017 additional claim on the October 9, 2016 original claim, provided he meets all other eligibility requirements.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs