

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**ROGER D HAYWARD**

Claimant

and

**HERMAN M BROWN CO**

Employer

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**HEARING NUMBER: 17BIWDUI-110**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**N O T I C E**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

**A REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.4-3, 96.5-3A

**D E C I S I O N**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** and **REMANDS** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Roger D. Hayward, worked for Herman M. Brown Co., from 2003 through August 15, 2016 as a full-time field mechanic earning \$28.55/hour. (17:28-17:45; 30:17-30:39) On October 19, 2014, the Claimant sustained a work-related injury for which he was placed on light duty, and at the same pay rate. (17:54- 18:05; 18:14-18:32; 31:23-32:55) He experienced reduced pay because he could no longer work overtime hours due to his injury. (33:02-33:30) Both parties expected the Claimant to return to the field mechanic position once he fully recovered from his injury. (19:38-20:05) Mr. Hayward worked this position performing light duty, i.e., answering phones, filing, and looking up machine information for personnel in the field for approximately two years. (39:55-40:22; 44:20-45:50)

On August 12, 2016, approximately two weeks after a workers compensation hearing (18:14-18:43; 21:24-23:12; 33:35-33:50; 39:02-39:08), the Employer informed Mr. Hayward that the light duty position was being terminated. (20:44-20:50; 25:27-25:33) The Employer offered him a parts position that paid \$24.21/hour (15:20-15:28; 15:37; 25:18-25:27; 33:58-34:35) and told him to think about it. The following Monday, August 15<sup>th</sup>, Mr. Hayward told the Employer that he could not accept the significant pay cut; he expected the Employer to offer him another position with comparable pay to the field mechanic's position. Instead the Employer told him "...[he] was laid off, to pick up his stuff and leave the building..." (30:45-31:02; 34:58-36:06; 36:34-36:51; 38:22-38:52) The Employer had no other work available to the Claimant within his restrictions that resulted from his work-related injury. After Mr. Hayward got home, he filed for unemployment benefits. (31:13-31:20; 36:07-36:21)

The Claimant has conducted work searches involving a security guard position, gas station attendant, toll booth operator, and shop manager for maintenance jobs in which he wouldn't have to work with equipment. (36:56-38:13) He has thus far not accepted any position because the pay was significantly lower than what he is required to accept at that time. (41:08-41:44)

## **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.24(8) provides:

*Refusal disqualification jurisdiction.* Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule [24.1\(21\)](#), before the Iowa Code subsection [96.5\(3\)](#) disqualification can be imposed...

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. In the instant case, both parties agree that the Claimant was a field mechanic earning \$28.55/hour. This pay rate continued even after the Claimant suffered a work-related injury that prevented him from performing his regular duties as a field mechanic, and forced him to light duty work. Although he received the same hourly rate, his hours were somewhat reduced as a result of his injury and subsequent inability to work additional overtime hours. In addition, the Employer sought to further reduce his hours when the Employer offered the Claimant another position once it became evident that Mr. Hayward would never be able to fulfill the field mechanic's position without restrictions. Mr. Hayward was still employed on August 12<sup>th</sup> when the Employer offered him a different position that the Claimant, after giving the position some thought, returned the following Monday, August 15<sup>th</sup>, and turned the offer down expecting a subsequent offer. At this, the Employer told him 'they'd have to part ways' and directed Mr. Hayward to pick up his things and leave the premises.

The record clearly establishes that the Employer's offer and the Claimant's refusal occurred while the Claimant was still employed with Herman Brown Co. The court in *Dico v. Employment Appeal Board*, 576 N.W.2d 352 (Iowa 1998) held that an offer of work and the claimant's refusal must occur **after** the claimant has filed for unemployment benefits in order to effectuate a disqualification. Mr. Hayward did not file for unemployment benefits until after he was terminated from his employment. Because the offer and refusal occurred *prior* to his application for benefits, his refusal did not disqualify him.

**DECISION:**

The administrative law judge's decision dated December 15, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant is allowed benefits provided he is otherwise eligible. In addition, this matter is REMANDED to the Iowa Workforce Development, Claims Bureau, for a determination of whether the Claimant is able and available for work.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv