

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIM J FISHER
407 P AVE
MILFORD IA 51351

MURPHY'S OF OKOBOJI INC
129 WEST BROADWAY
PO BOX 16
OKOBOJI IA 51355

Appeal Number: 04A-UI-08063-S2T
OC: 07/04/04 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Refusal to Accept Suitable Work
871 IAC 24.1(113)a – Separations From Employment

STATEMENT OF THE CASE:

Murphy's of Okoboji (employer) appealed a representative's July 22, 2004 decision (reference 03) that concluded Tim Fisher (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2004. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Kae Hoppe, Owner.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in May 2003, as a part-time seasonal door guy. The claimant was laid off for lack of work on August 31, 2003.

The employer recalled the claimant to work on April 23, 2004. The claimant accepted the job but did not appear for work.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant was still employed. For the following reasons the administrative law judge concludes he was not.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) 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.

The employer laid the claimant off for lack of work on August 31, 2003. When an employer suspends a claimant from work status for a period of time, the separation does not prejudice the claimant. The claimant is eligible to receive unemployment insurance benefits based on his lay off from employment.

The next issue is whether the claimant refused an offer of suitable work. For the following reasons the administrative law judge concludes he did.

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 section 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 claimant was offered work by a former employer. That work was within the claimant's usual occupation. The claimant did not previously quit work with this employer. When work is offered by a previous employer, the work is usual for the claimant and the claimant did not previously quit working for the employer, the claimant's refusal of work is a disqualifying event. The claimant is not eligible to receive unemployment insurance benefits because he refused work from the employer.

DECISION:

The representative's July 22, 2004 decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he refused work from the employer.

bas/smc