



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: AUGUST 19, 2009

IN THE MATTER OF: Appeal Board No. 545949

PRESENT: MICHAEL T. GREASON, TANYA R. DANIEL MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective July 30, 2008, on the basis that the claimant refused an offer of suitable employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed March 25, 2009 (A.L.J. Case No.), the Administrative Law Judge granted the claimant's application to reopen 308-07109 and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** Prior to March 2008, the claimant, who resides in western New York, worked for a photography business ("GL") as a salesman and a photographer. The claimant had an employment contract with that business which provided that the claimant would be paid based on days worked and on commissions from income he generated from new and existing accounts. In March 2008, the owner of that business died unexpectedly, and shortly thereafter, the business closed. When the business closed, the claimant believed he was owed approximately \$40,000 in unpaid commissions.

The claimant filed an original claim for unemployment benefits effective June 16, 2008. He received a handbook from the Department of Labor which informed him that he was required to accept employment for which he was fitted by training and experience and which paid the prevailing wage.

In July 2008, a second company ("HJ") purchased the assets of the photography

business. HJ's office manager called the claimant and other former employees of the first business to a meeting which occurred on July 30, 2008. At that meeting, the claimant was offered a job as a photographer, a position which would have paid him less than he had been making with GL. The claimant inquired about also working as a salesman, but was told that no such position was available. He also asked about his unpaid commissions, and was told that HJ had not taken on GL's liabilities. At that point, the claimant left the meeting because he would be making less with HJ than he had made with GL and because HJ was not going to pay him commissions he believed he was owed by GL. Had the claimant not left the meeting, HJ was going to offer him a wage of \$12 per hour. The prevailing wage for photographers in the Western New York region is \$10.64 per hour.

OPINION: The credible evidence establishes that the claimant walked out of a meeting with a prospective employer, where he was in the process of being offered employment as a photographer. Although the claimant had not been provided with all details of the job at the time he walked out, his action prevented the offer from being fully made. His action is thus tantamount to a refusal of employment. As the claimant had previously worked as a photographer, the offer was one to which he was suited by training and experience. Because the offer would have been above the prevailing wage for photographers in the claimant's region, the claimant was required to accept the offer unless good cause existed for his refusal. His contention that he had good cause because the job offered would have paid him substantially less than he was making with GL is without merit. There is no provision in Labor Law § 593 (2), that a job may be refused because it paid less than the claimant had previously earned. The fact that the salary offered was less than that previously earned does not constitute good cause for refusing the offered position (see, *Matter of Heller*, 240 AD2d 791 [3d Dept 1997]). Equally, we are not persuaded by the claimant's contention that he had good cause to refuse the offer because HJ would not agree to pay him \$40,000 which he believed he had been owed by GL at the time it went out of business. Even assuming that the claimant was owed \$40,000 by GL, there is no evidence to establish that HJ was liable for that debt. HJ's manager testified that HJ purchased only the assets of GL, and there is no evidence to the contrary. As the claimant did not have good cause to refuse the offered employment, he is disqualified from the receipt of benefits.

DECISION: The decision of the Administrative Law Judge is affirmed.

The initial determination, disqualifying the claimant from receiving benefits, effective July 30, 2008, on the basis that the claimant refused an offer of suitable employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER

TANYA R. DANIEL, MEMBER