

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J UNDERWOOD
Claimant

APPEAL NO. 08A-UI-00810-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GAYEWSKI, JOHN JR
G & B CONSTRUCTION
Employer

OC: 01/07/07 R: 04
Claimant: Appellant (1)

Section 96-5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

John Underwood filed an appeal from a representative's decision dated January 16, 2008, reference 01, which denied benefits upon a finding that the claimant refused a recall to suitable work on December 10, 2007. After due notice was issued, a telephone conference hearing was scheduled for and held on February 7, 2008. The claimant participated personally. Participating on behalf of the claimant was Troy Russell, union representative. The employer participated by John Gayewski, company owner, and Nancy Rohrer, office manager.

ISSUE:

The issue in this matter is whether the claimant refused an offer of suitable work from G & B Construction.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for G & B Construction as a heavy equipment operator beginning on May 3, 2007. The claimant last worked until December 6, 2007. On December 7, 2007, work was not available, due to inclement weather conditions. The following week, G & B Construction contacted Mr. Underwood on three occasions, informing him work was available in his usual job as a heavy equipment operator. Due to inclement weather conditions, however, the claimant did not report. On December 12, 2007, G & B Construction contacted the claimant, offering eight hours of work that day moving construction equipment. Mr. Underwood refused the offer, stating, "Get someone else to do it." Mr. Underwood re-opened a claim for unemployment insurance benefits and did not re-contact the company again. Other heavy equipment operators employed by the company reported and performed services for G & B during this time period. The claimant had previously stated to other employers that it is his normal practice to travel to the state of Florida for an extended period during winter months to visit family and for recreational purposes.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant refused offers of suitable work during the week of December 10, 2007, made by G & B Construction. The evidence in the record establishes that the employer repeatedly contacted Mr. Underwood, offering available employment; however, the claimant chose to reject the offers. The offers were for the same pay, duties, and assignments as the claimant regularly performed for this employer. The administrative law judge concludes, based upon the evidence in the record, that the claimant has not shown good cause for failing to accept offers of suitable work. The administrative law judge also concludes that there may be a question regarding the claimant's availability based upon the claimant's yearly winter trips to the state of Florida for personal purposes.

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. 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:

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

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

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

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

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

For the reasons stated herein, the administrative law judge concludes that the claimant refused an offer of suitable work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated January 16, 2008, reference 01, is hereby affirmed. The claimant refused an offer of suitable work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw