

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILL L WRIGHT

Claimant

APPEAL NO. 11A-UI-05037-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY

Employer

OC: 02/06/11

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

Section 96.5-3-a – Offer of Suitable Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 6, 2011, reference 02, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 12, 2011. The claimant participated personally. Participating on behalf of the claimant was Mr. Michael Motto, attorney at law. The employer participated by Ms. Denice Norman, hearing representative, and witness Ms. Sue McDonald, human resource generalist. Employer's Exhibits One and Two were received into evidence.

ISSUE:

At issue is whether the claimant is able and available for work and whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Bill Wright was employed by The HON Company from May 9, 2005, until February 27, 2010, when he was laid off work. Mr. Wright worked as a distribution support employee on a full-time basis and was paid \$12.22 per hour. His immediate supervisor was Sean Anderson.

At the time of the claimant's layoff due to business conditions, the claimant and other employees were informed via a layoff packet about the company's recall procedures. The packet explained that if recalled, the employer would provide five days' advance notice of the recall and that the employer would consider a worker's failure to respond to a recall for the same work grade, hours, and pay to be tantamount to voluntarily quitting employment.

On or about May 11, 2010, the company sent a letter of recall to the claimant's address of record. The recall notice was sent certified mail return receipt requested. The letter was mistakenly dated May 21, 2010 (See Exhibit Number One) and was received by Mr. Wright on the afternoon of May 17, 2010, when the claimant returned from being out of town. The letter informed Mr. Wright that the company expected him to return to work the following day, Tuesday, May 18, 2010, offering him the same shift, pay, and duties. Mr. Wright was also

informed that his immediate supervisor would again be Sean Anderson. Due to the lateness in the day when Mr. Wright retrieved the certified letter from the post office, he was unable to call the company's human resource department. The claimant had previously been instructed to call his immediate supervisor with work issues. Mr. Wright contacted Sean Anderson, his supervisor, in an attempt to secure a ride to work the following day, as he had in the past with Mr. Anderson. Mr. Anderson informed the claimant that due to some changes in exact working hours, he would not be able to provide transportation for the claimant the next day. Mr. Wright indicated his intention to return to work but informed his supervisor that his return on May 18, 2010, might be delayed by one day because the claimant needed to secure transportation. The work site is approximately 30 miles from the claimant's residence. Public transportation was not available to that area and the claimant could not afford taxi fare. Mr. Wright then attempted to secure a ride to work with other individuals and also called The HON Company on May 18, 2010, informing the company of his one-day delay in returning to work. Although the claimant's supervisor had told the claimant to "do what you can," he was informed during the telephone conversation with The HON Company that a separation from employment would occur if he did not report that day as directed. Subsequently, the claimant received a letter from The HON Company confirming his termination from employment.

It is the employer's position that the mistaken date on the letter of recall was of no consequence because the claimant had been given sufficient time from the May 11, 2010, mailing date until the May 18, 2010, recall date to receive the letter and report for work.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Wright refused to accept an offer of suitable work from his former employer.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

871 IAC 24.24(8) provides:

(8) 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. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Code section 96.5-3-b 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.

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.

The evidence in the record establishes that The HON Company made a bona fide offer of employment to Bill Wright but that the claimant was not able to respond to the recall because he had been out of town and lacked transportation to return the next day, May 18, 2010. The employment offered by The HON Company was suitable, as it was the same job, pay, and hours, and under the same supervision as the claimant previously had with this employer.

The record in this matter shows Mr. Williams was not available for work during the week of May 16, 2010 because he had been out of town and lacked transportation. Lack of transportation, illness, or health conditions, etc, are generally considered to be good cause for refusing work or recalls for work, and thus the claimant's availability to receive unemployment insurance benefits would be the issue to be determined.

The administrative law judge, however, concludes, based upon the evidence in the record, that the fact-finder's decision in this matter erroneously found that the claimant's refusal of work took place on May 18, 2011, when in fact the refusal took place on May 18, 2010. 871 IAC 24.24(8) provides that both the offer of work and the claimant's accompanying refusal must occur within the individual's benefit year as defined in sub-rule 24.1(21) before the Iowa subsection 96.5-3 disqualification can be imposed. As the refusal did not occur within the claimant's benefit year on his claim dated February 6, 2011, Mr. Wright is not subject to a benefit disqualification. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated April 6, 2011, reference 02, reversed. The claimant's refusal of work did not occur within his benefit year. Therefore, the claimant is not subject to a disqualification from unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw