

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL DAVIS**

Claimant

**APPEAL NO. 08A-UI-03154-ET**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**PIPER MOTOR COMPANY INC**

Employer

**OC: 01-20-08 R: 03  
Claimant: Respondent (2R)**

Section 96.5(3)a – Work Refusal  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 21, 2008, reference 08, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Bruce Piper, Owner and Cliff Meets, Parts Salesperson, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant refused a suitable offer of work.

**FINDINGS OF FACT:**

The employer made offers of work to the claimant before and after February 27, 2008. Those offers included the following terms: Returning to his job taking parts off cars, working from 8:00 a.m. to 5:30 p.m., earning \$10.00 per hour, plus 50 cents over what he was making when working there previously. The claimant's average weekly wage is \$408.45. The offer was made in the fifth week of unemployment. The claimant quit his job in late January 2008 after the employer chastised him for using his cell phone so frequently at work, including times where he was on his cell phone three hours per day. Additionally, the claimant's wages were being garnished for back child support and he wanted a job where the state could not get at his wages. Furthermore, the state was calling the employer's phone three to four times per day and the claimant himself more than that. After quitting his job following a confrontation about his cell phone usage, the employer offered him his job back with the raise. The employer also testified the claimant has been running a scrap metal business from his home because the price of scrap metal skyrocketed and he could make money without reporting it to the state. The claimant told the employer he would return to work for \$15.00 per hour.

Because the claimant did not participate in the hearing, the issue of whether he is able and available for work because he may be self-employed requires more specific information. That issue is remanded to the Claims Section for an initial investigation and determination.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant did refuse a suitable offer of work.

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.

The offer of work appears to be suitable, as it met the minimum wage requirements, with the 50 cent raise, set out above for an offer to be considered suitable and the claimant did not have a good-cause reason for the refusal. The claimant quit because he was reprimanded about using his cell phone for approximately three hours per day. Additionally, he was upset that the state was garnishing his wages for back child support payments and told the employer and co-workers he wanted a job where the state could not get to his wages. For the above stated reasons, the administrative law judge cannot find that the circumstances relating to his previous separation from this employer still exist or justify his failure to accept suitable work from the employer. Therefore, benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The March 21, 2008, reference 08, decision is reversed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,855.00. The issue of whether the claimant is able and available is remanded to the Claims Section.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css/pjs