

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL W GURNEY
Claimant

APPEAL NO. 09A-UI-16037-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMART HONDA
Employer

**Original Claim: 07/19/09
Claimant: Respondent (2)**

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed a representative's October 19, 2009 decision (reference 02) that held the claimant eligible to receive benefits because the claimant refused to accept work that was not suitable for him. A telephone hearing was held on December 1, 2009. The claimant participated in the hearing. Mike Haynes, the parts and service supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant refuse an offer of work that was not suitable for him?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant had been working for Holmes Honda as an automobile mechanic. The employer bought Holmes Honda on July 22, 2009. Holmes Honda's unemployment insurance account was not transferred to the employer.

The employer offered the claimant the same job as he had at Holmes Honda. Initially, the employer had no plans to change the hours or wages of employees. The employer told the claimant and others that the employer would evaluate everyone's performance for 90 days before any possible changes were implemented. When the claimant worked for Holmes Honda, he had four to five weeks of vacation. The employer had a maximum of three weeks of vacation.

To work for the employer, the claimant and other previous Holmes Honda employees had to complete an application form and a new W-2 Form. While the claimant was completing his W-2 form, he decided he could not work for the employer. There were rumors about how the employer was going to change hours, wages, and the guarantee employees received. As a Holmes Honda employee the claimant had a 72.5 percent guarantee. The employer gave the employees an 80 percent guarantee. The employer had not made any decision about changing hours and wages when the employer offered the claimant a job. The claimant declined to accept the employer's offer of work on July 22, 2009, because of the reduction in his vacation and because of the possibility his hours and wages would be changed.

The claimant established a claim for benefits during the week of July 19, 2009. The claimant has filed for and received a total of \$7,373.00 in benefits for the weeks ending July 25 through December 5, 2009. The claimant also received an additional \$25.00 each of these weeks from the government's stimulus program.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he refused an offer of suitable work without good cause. Iowa Code section 96.5-3-a. During the week the claimant established his claim for benefits, the employer offered the claimant continuing employment. The employer asked the claimant to continue working as an automobile mechanic, the same job he had at Holmes Honda. On July 22, the employer offered the claimant the same hours and rate of pay to work as an auto mechanic. Instead of guaranteeing 72.5 percent, the employer agreed to guarantee 80 percent. The employer had a maximum of three weeks of vacation, but the claimant had received four to five weeks of vacation when he worked for Holmes Honda. The employer told the claimant and others, the hours and salary would be evaluated in 90 days, at which time there could be changes.

Since the job the employer offered the claimant was the same job he had when he worked for Holmes Honda, the job the employer offered was suitable. The claimant declined this job because he lost some vacation time and because he did not know if the employer would change his hours and salary after working 90 days and if there was a change, what the change would be. At the time the claimant declined the offer of work, there was no change in his hours or salary. As a result, the claimant did not establish good cause for declining an offer of suitable work. Therefore, as of July 19, 2009, the claimant is not qualified to receive benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending July 25 through December 5, 2009. He has been overpaid a total of \$7,873.00 in benefit he received for these weeks.

DECISION:

The representative's October 19, 2009 decision (reference 02) is reversed. The employer offered the claimant a suitable job on July 22, 2009. The claimant refused the employer's offer of work without good cause. The claimant is disqualified from receiving unemployment insurance benefits as of July 19, 2009. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The claimant has been overpaid and must repay a total of \$7,873.00 in benefits he received for the weeks ending July 25 through December 5, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw