

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN D BUTZLAFF
Claimant

APPEAL NO. 19A-UI-03651-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTINSON CONSTRUCTION COMPANY
Employer

OC: 02/03/19
Claimant: Respondent (2)

Section 96.5-3-a – Work Refusal
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 30, 2019, reference 02, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on May 22, 2019. Employer participated by Scott Martinson. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether claimant refused to accept a suitable offer of work.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As employer was the only participant in the hearing, all findings of fact are derived from employer's testimony. Employer made an offer of work to the claimant on April 3, 2019. That offer included the following terms: Claimant was offered the same position at the same wages as he'd held prior to the layoff of January 18, 2019. The offer was made in the eleventh week of unemployment. Claimant refused the offer of work by not responding to employer.

At the time of the layoff in January, claimant, who does not have a phone, requested that employer contact claimant about the rehire through a co-worker who was a friend of claimant. Employer did so on April 3, 2019 telling Kieler Wilson to inform claimant that work was to begin on April 8, 2019. Claimant did not show for work on that date, but told his friend to tell employer that he would be in the next day. Claimant did not show for work the next day, and employer asked the friend what had happened. The co-worker said that he had no idea why claimant decided not to show for work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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:

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

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

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

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

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

Iowa Admin. Code r. 871-24.24(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.

Iowa Admin. Code r. 871-24.24(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.

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work. Employer made an offer to work to claimant through the means that claimant requested to be informed, and claimant stated through his friend that he would be in to work the next day, but claimant didn't show for work. Claimant did not present any reason that he did not show up for work.

DECISION:

The decision of the representative dated April 30, 2019, reference 02 is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn