

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS A JOHNSON**  
Claimant

**APPEAL NO. 11A-EUCU-00604-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K & V CONSTRUCTION**  
Employer

**OC: 08/16/09**  
**Claimant: Respondent (2/R)**

Section 96.5-3-a – Refusal of Suitable Work  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

K & V Construction (employer) appealed a representative's July 15, 2011 decision (reference 08) that concluded Douglas Johnson (claimant) was eligible to receive unemployment insurance benefits because there was no offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 12, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Kenny Koenen, Owner.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in June 2010, as a full-time laborer. The claimant and all other employees were laid off from work in January 2011 due to lack of work. The claimant filed for unemployment insurance benefits for the week ending January 22, 2011. On June 8, 2011, the employer left the claimant a message offering a job that would be a cut in pay from \$13.00 per hour to \$11.00 per hour. The employer told the claimant to call if he wanted his job back. The claimant did not file for unemployment insurance benefits after June 25, 2011.

The employer sent the claimant a certified letter on July 25, 2011, with the same information. The claimant was instructed to contact the employer within one week of acceptance of letter. The letter was returned to the employer without delivery. On August 9, 2011, a female told the employer that the claimant was incarcerated as of July 11, 2011, and remains confined.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Code § 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.

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(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.

In order for an offer of work to be made, the employer must make personal contact with the claimant. The employer did not offer the claimant work on June 8, 2011, because the employer did not make personal contact with the claimant. No offer of work was made to the claimant on June 8, 2011.

The next offer of work was made by the employer to the claimant by certified letter on July 25, 2011. The claimant stopped filing his claim for benefits on June 25, 2011. The claimant refused work when he had no claim for unemployment insurance benefits on file. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused.

The second issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(12) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(12) If a claimant is in jail or prison, such claimant is not available for work.

When an employee is incarcerated and unable to perform work due to that incarceration he is considered to be unavailable for work. The claimant was incarcerated from July 11, 2011, to the present. He is considered to be unavailable for work from July 11, 2011. The claimant is disqualified from receiving unemployment insurance benefits beginning July 11, 2011, due to his unavailability for work.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits may now constitute an overpayment. The issue of the overpayment is remanded for determination.

**DECISION:**

The representative's July 15, 2011 decision (reference 08) is reversed. The claimant is disqualified from receiving unemployment insurance benefits beginning July 11, 2011, due to his unavailability for work. The issue of the overpayment is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs