

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN EICHELBERGER
Claimant

IRON SPECIALTIES INC
Employer

APPEAL NO: 13A-UI-06135-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/13
Claimant: Respondent (2-R)

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 May 15, 2013, reference 02, 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 July 1, 2013. The claimant did not provide a phone number where he could be reached prior to the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Katrina Sonntag, Office Manager and Mark O'Brien, President, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The claimant was hired by Iron Specialties as a full-time laborer December 1, 2011. He worked between 6:00 a.m. and 6:00 p.m., depending on the job, and was paid \$13.38 per hour. The employer laid off its' employees January 25, 2013, due to a seasonal slowdown.

On March 6, 2013, the claimant contacted the employer and told it he was not coming back when the employer recalled employees, as it did April 11, 2013. The employer made an offer of work to the claimant on March 6, 2013, to start April 11, 2013. That offer included the following terms: A full-time laborer working 6:00 a.m. to 6:00 p.m., depending on the job, earning \$13.38 per hour. The claimant's average weekly wage is \$583.79. The offer was made in the sixth week of unemployment and consequently had to be at least 75 percent of the claimant's average weekly wage, which would be \$437.00. The employer's offer would have paid the claimant \$535.20 per week.

Foreman Jason O'Brien called the claimant April 4, 2013, to confirm he was not returning for the recall and the claimant stated he was not and had another job with Redler Excavation. Mr. O'Brien provided an affidavit stating he observed the claimant working at Redler Excavation

April 4, 2013, and Joe Edwards stated the claimant was performing work for Contract Roofing June 10, 2013 through the present date (Employer's Exhibits Two and Three). The employer also provided the names and phone numbers of three other individuals who could verify the claimant's employment while collecting unemployment insurance benefits: Erik Sonntag, Jeremy Boes and Mike Redler (Employer's Exhibit One).

The claimant has claimed and received unemployment insurance benefits since his layoff 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 employer made a suitable offer of work to the claimant March 6, 2013. The offer was suitable as it met the wage and hour requirements and was effectively the same job as the claimant had been doing without complaint and the claimant did not have a good-cause reason for the refusal. Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

The employer provided some evidence that the claimant was receiving income that should have been reported to reduce his benefits. This is a matter not included on the hearing notice and the administrative law judge is without jurisdiction to make a ruling on that issue. This matter is remanded to the Investigation and Recovery Unit to determine if the claimant was receiving wages that he failed to report.

DECISION:

The May 15, 2013, reference 02, decision is reversed. The claimant did refuse a suitable offer of work. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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