

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMONCIO S SLIVA-CERDA
Claimant

RENS' CONCRETE INC
Employer

APPEAL 16A-UI-13070-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/16
Claimant: Respondent (1R)**

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the November 30, 2016, (reference 02) unemployment insurance decision that allowed benefits based upon finding no offer of work was made to the claimant by this employer. After due notice was issued, a telephone conference hearing was held on December 29, 2016. The claimant participated personally and through a Spanish CTS Language Link interpreter (Rafael). The employer was represented by Robert Rens, owner. Employer Exhibit 1 was admitted into evidence.

ISSUES:

Was a suitable offer of work made to the claimant?

If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a seasonal laborer beginning in 2015. He was laid off over the winter and returned to work in spring 2016. He last performed work on April 13, 2016. The undisputed evidence presented is that the claimant separated from employment April 13, 2016 and no offer of work was made to the claimant to return to employment, nor did the claimant seek reemployment with this employer.

The claimant has since been permanently separated from employment. That separation has not yet been determined at the claims level. The claimant appears to have requalified since separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to the claimant.

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. (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.

The undisputed evidence is that upon the claimant's separation with the employer effective April 13, 2016, no offer of work was made by the employer to the claimant.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The November 30, 2016, (reference 02) unemployment insurance decision is affirmed. The employer did not communicate an offer of work to claimant. Benefits are allowed, provided the claimant is otherwise eligible. **REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs