

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAINE E FERCH

Claimant

APPEAL NO. 08A-UI-09474-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SODERBERG MASONRY INC

Employer

**OC: 01/20/08 R: 12
Claimant: Appellant (2)**

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 8, 2008, reference 02, decision that denied benefits as of the week ending Saturday, September 13, 2008. After due notice was issued, a telephone conference hearing was held on October 30, 2008. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was 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: Employer made an offer of recall to work to claimant on Monday, September 15, 2008 but claimant had already obtained another job and reported wages of \$800.00 for the week ending September 20, 2008. His next claim was filed for the week ending October 18, 2008 on a temporary layoff and he reported \$100.00 in partial wages for that week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant had a good cause reason for refusing the recall to 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(7) provides:

- (7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The offer of recall to work was suitable but claimant was already working elsewhere and reported wages for the week ending September 20, 2008, thus the refusal was for a good cause reason. The representative erred in locking the claim for the week ending September 13, 2008 since the offer was not made until September 15, 2008. Because the wages for the week ending September 20 were \$800.00, claimant would not be eligible for that week only and is eligible for partial benefits for the week ending October 18, 2008.

DECISION:

The October 8, 2008, reference 02, decision is reversed. Claimant had a good cause reason for refusing the offer of recall to work. Benefits are allowed, provided claimant is otherwise eligible.

The benefits erroneously withheld effective the week ending September 13, 2008 shall be paid to claimant forthwith.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css