

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**COLIN J LAUBENTHAL**  
Claimant

**ECI JOBS INC**  
Employer

**APPEAL NO. 19A-UI-08140-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/28/19**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Colin Laubenthal filed a timely appeal from the October 14, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Laubenthal refused an offer of suitable work on September 19, 2019 without good cause. After due notice was issued, a hearing was held on November 6, 2019. Mr. Laubenthal participated. Diana Salmeron represented the employer and presented additional testimony through Tammy Christenson. Exhibits 1 and 2 and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether the claimant refused an offer of suitable work without good cause on or about September 19, 2019.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: ECI Jobs, Inc. is a temporary employment agency located in Spencer, Iowa. Claimant Colin Laubenthal commenced getting work through ECI in 2009 and has more consistently obtained work with ECI since 2017. ECI is Mr. Laubenthal's sole base period employer for purposes of a claim year that began for Mr. Laubenthal on April 28, 2019. Mr. Laubenthal's average weekly wage for his highest earning base period quarter was \$521.06. Mr. Laubenthal reports that he suffers from schizophrenia.

Mr. Laubenthal last performed work for the employer in a full-time, temporary forklift operator work assignment at South Shore Enterprises. That assignment started on August 6, 2019 and ended on September 13, 2019, when Mr. Laubenthal completed the assignment. The work hours in the South Shore assignment were 7:00 a.m. to 2:30 p.m., Monday through Friday. The assignment paid \$12.60 per hour.

On September 18, 2019, ECI offered Mr. Laubenthal a new, full-time, temporary work assignment at Isonova in Spencer. ECI told Mr. Laubenthal that the assignment would pay \$15.00 per hour and would involve reworking/repackaging powdered egg product. The weekly

wages would be \$600.00. ECI told Mr. Laubenthal the work hours would be 7:30 a.m. to 4:00 p.m., Monday through Friday. Mr. Laubenthal asked for a tour of the workplace so that he could better understand the proposed work and decide whether he wanted to accept the assignment. If Mr. Laubenthal wanted the assignment, the prospective start date was September 23, 2019. ECI contacted Isonova and set up a tour for Mr. Laubenthal to take place on September 19, 2019 at 8:00 a.m. ECI provided Mr. Laubenthal with the date, time and location of the tour. Mr. Laubenthal failed to appear for the tour as scheduled. Instead, Mr. Laubenthal showed up unannounced at another client business, Pivot Point, at 9:00 a.m. on September 19. Pivot Point is located one block from Isonova. Isonova contacted ECI on the morning of September 19 to let the employer know that Mr. Laubenthal had not appeared for the tour. Pivot Point notified ECI that Mr. Laubenthal had shown up at their facility that morning. ECI then contacted Mr. Laubenthal to talk to him about the fact that he had gone to the wrong facility. Mr. Laubenthal stated that he had been confused. ECI then instructed Mr. Laubenthal to immediately report to the Isonova facility for a rescheduled tour. ECI notified Isonova that Mr. Laubenthal was on his way and asked Isonova to let ECI know if Mr. Laubenthal accepted the work assignment. Mr. Laubenthal elected not to report to the Isonova facility for the tour. Isonova contacted ECI to give notice that Mr. Laubenthal had not appeared. ECI then made several attempts to reach Mr. Laubenthal to discuss that matter, but was unable to reach Mr. Laubenthal for a number of days. Mr. Laubenthal had not paid for his phone service and therefore was without phone service during that time. ECI accurately concluded that Mr. Laubenthal was no longer interested in the Isonova assignment.

On September 26, 2019, ECI commenced its attempts to reach Mr. Laubenthal regarding another available work assignment. When ECI was unable to reach Mr. Laubenthal by telephone, ECI sent a certified letter to Mr. Laubenthal on September 30, 2019. The letter stated that the ECI had an assignment for Mr. Laubenthal that would pay \$18.00 per hour, that would be 35 miles from Spencer, and that would involve moving solar panels. ECI told Mr. Laubenthal through the certified letter that the work hour would be 7:30 a.m. to 5:00 p.m., Monday through Friday. ECI stated in the letter that ECI needed to hear from Mr. Laubenthal by October 5, 2019 regarding whether he was interested in the assignment. Mr. Laubenthal had previously performed work for ECI in several assignments outside the Spencer area, including assignments in Emmetsburg, Spirit Lake and Okoboji. Mr. Laubenthal received the certified letter on October 3, 2019, but did not contact ECI by the October 5 deadline referenced in the certified letter.

On October 7, 2019, Mr. Laubenthal stopped into the ECI office and asked if the assignment referenced in the certified letter was still available. Mr. Laubenthal told ECI that if the \$18.00 per hour assignment referenced in the certified letter was no longer available, he was now again interested in the \$15.00 per hour Isonova assignment. ECI contacted with the client businesses and learned that both positions had been filled. Mr. Laubenthal then expressed interest in returning to a new assignment at South Shore when a new assignment there became available.

On September 19, 2019 when Mr. Laubenthal elected not to follow through on the proposed Isonova assignment on September 19, 2019, his unemployment insurance claim was not active. At that time, Mr. Laubenthal had most recently filed a weekly claim for the week that ended August 3, 2019. Mr. Laubenthal had discontinued the claim while he was in the South Shore assignment. Mr. Laubenthal took steps to establish an additional claim for benefits that was effective September 22, 2019, but delayed filing weekly claims. Mr. Laubenthal reopened his weekly claim effective October 6, 2019 and commenced making weekly claims at that time.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3) provides as follows:

Causes for disqualification.

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Administrative Code rule 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, it must first be established that a bona fide offer of work was made to the individual by personal contact 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.

The evidence establishes that Mr. Laubenthal refused a bona fide offer of suitable work on September 19, 2019 without good cause. ECI had provided Mr. Laubenthal with all appropriate information concerning the proposed Isonova assignment, including the location, the pay, the work hours, and other particulars. The work was in all relevant aspects suitable. ECI communicated to Mr. Laubenthal that the Isonova assignment was his for the taking. Mr. Laubenthal communicated a definite refusal of the assignment through his repeated failure to report for the tour he requested, through his failure to follow up with ECI or the Isonova in a timely manner regarding the assignment. Both the offer and the refusal fell within the benefit year that started for Mr. Laubenthal on April 28, 2019. Mr. Laubenthal has failed to present

evidence demonstrating good cause for refusing the offer of suitable work. Accordingly, effective September 19, 2019, Mr. Laubenthal is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Laubenthal must meet all other eligibility requirements. Based on the disqualifying work refusal, the employer's account shall not be charged for benefits for the period beginning September 19, 2019.

**DECISION:**

The October 14, 2019, reference 01, decision is affirmed. The claimant refused an offer of suitable employment on September 19, 2019 without good cause. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The employer's account will not be charged for benefits for the period beginning September 19, 2019.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn