

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE M JOHNSON**  
Claimant

**APPEAL NO. 16A-UI-05499-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CUSTOM PRECAST COMPANY**  
Employer

**OC: 01/10/16**  
**Claimant: Respondent (2/R)**

Section 96.5-3-a – Work Refusal  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 4, 2016, reference 02, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on June 1, 2016. Claimant participated personally. Employer participated by Carolyn Kelchen. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits One through Three were admitted into evidence.

**ISSUES:**

Whether claimant refused to accept a suitable offer of work.

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer made an offer of work to the claimant on March 08, 2016. That offer included the following terms: While working for employer, claimant was placed on a seasonal layoff on December 18, 2015. In February 2016, claimant took a full-time job with another employer. Claimant did not inform employer of his new job. On March 8, 2016, employer received information that claimant was no longer able to be insured by the company's insurance as claimant had pled guilty to a failure to control a vehicle. The claimant was offered an immediate offer of full time employment for employer working a forklift at the same rate of pay claimant had been receiving to be a truck driver and installer. When a message was left for claimant with this offer, claimant did not return the call as he was already working another job.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was not able and available for work.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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) 100 percent, if the work is offered during the first five weeks of unemployment.
- (2) 75 percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) 70 percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) 65 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.

Claimant was no longer able and available for work as of the date in February when claimant took up new and different employment. As of that date, claimant was not eligible to receive unemployment benefits.

This matter shall be remanded to the fact finder to determine the specific date when claimant took up other employment. As of that date, claimant was not able and available for work. Additionally, this matter is being remanded to the fact finder to determine the issue of separation between the parties.

**DECISION:**

The decision of the representative dated May 4, 2016, reference 02, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

This matter shall be remanded to the fact finder to determine the specific date when claimant took up other employment. As of that date, claimant was not able and available for work. Additionally, this matter is being remanded to the fact finder to determine the issue of separation between the parties.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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