

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTIN G HERNANDEZ
Claimant

MERIDIAN MANUFACTURING
Employer

APPEAL 16A-UI-07137-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/22/15
Claimant: Appellant (2-R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 16, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a failure to return to work after a layoff. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2016. Claimant participated. Employer participated through human resources assistant Matt Crum.

ISSUE:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked on April 4, 2016, and was placed on a voluntary layoff. His son was the victim of a homicide on March 13, 2016. He attempted to return to work before April 4 but was unable to do so. The employer was going through a period of limited layoffs so agreed to place claimant on a voluntary temporary layoff. Human resource manager Marla Smith provided claimant a letter dated April 5, 2016, when he left and also verbally instructed him to return to work on May 31, 2016. It did not protest unemployment insurance benefits for this period of time. The letter stated that his failure to return on this date would be considered a voluntary quit but there was no offer or communication on or around May 31, 2016. He did not return to work at the end of the layoff period and claimant did not communicate with the employer. Claimant recalls being told to return whenever he could and does not recall receiving the letter or the verbal instruction and became aware of the employer's position when he found out about the June 16, 2016, unemployment insurance decision denying benefits (he had not participated in the fact-finding interview with Smith) on June 27, 2016. Smith was not available to testify in the appeal hearing and Crumm did not have many details of her communication with claimant or information. Claimant is eligible to reapply for work.

REASONING AND CONCLUSIONS OF LAW:

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

If employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. Since no offer of work was actually made, benefits may be allowed on this basis, provided he is otherwise eligible. However, the issues of the separation from employment due to failure to return to work after a layoff period, and the claimant's ability to and availability for work due to personal grief issues have not been determined by the Benefits Bureau.

DECISION:

The June 16, 2016, (reference 01) unemployment insurance decision is reversed. The employer did not communicate an offer of work to claimant. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The separation and ability/availability issues delineated above are remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs