

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC M STANLEY
Claimant

APPEAL NO: 10A-UI-09598-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOUGLAS MACH & ENGINEERING CO INC
Employer

OC: 05/23/10

Claimant: Respondent (5/R)

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

STATEMENT OF THE CASE:

Douglas Machine & Engineering Company, Inc. (employer) appealed a representative's June 23, 2010 decision (reference 01) that concluded Eric M. Stanley (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2010. The claimant participated in the hearing. Rex Ridenour, Attorney at Law, appeared on the employer's behalf and presented testimony from one witness, Rich Dipple. One other witness, April Bright, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on November 3, 2008. He worked full time as a trainee tool designer. His last day of work was April 27, 2009; he was laid off by the employer at that time due to lack of work. His rate of pay at that time was \$18.00 per hour.

On May 7 Mr. Dipple, the employer's design room supervisor, called the claimant. He indicated that work had picked up and that the claimant could return to his position, presumably at the same hours and wages at which he had been when the layoff occurred. The claimant indicated he could not, as he was otherwise employed at that time. The administrative law judge notes that in a separately issued decision by another administrative law judge in 10A-UI-09725-JTT it was found that the claimant was employed full time by another employer, Zebedee Corporation, through May 21, 2010, at which time he was laid off from that employment.

On or about June 20 the claimant called and left a message for Mr. Dipple to call him; Mr. Dipple returned the call on June 22. The claimant's reason for calling was to inquire whether the employer might have some outside design work it would be willing to contract with

the claimant to do. The employer did not, but Mr. Dipple did again indicate that the claimant could return to his employment with the employer. The claimant again declined. His reason for declining was that even though he was not then employed by another employer, since the layoff in April 2009 he had purchased a house and moved from Brighton, Iowa, about an hour and 15 minute drive to the employer's location in Davenport, to Keswick, Iowa, about a two hour and 20 minute drive to the employer's location in Davenport. Further, while the claimant had previously frequently stayed at his mother's home in Davenport during the week, he and his wife had also had a child since the layoff from the employer, so the claimant had further family responsibilities which precluded him from routinely being away from home during the week.

After the layoff from this employer the claimant had established an unemployment insurance benefit year effective April 19, 2009. That claim year expired by operation of law on April 18, 2010, although the claimant had last claimed benefits during that year the week ending December 26, 2009. After his layoff from Zebedee Corporation the claimant established a new benefit year effective May 23, 2010. As of the date of the hearing the Agency had categorized the claimant as a "group 3" claimant, exempting him from a work search while he was temporarily laid off. However, the claimant had been making some work search efforts, and while he noted that there were not really options available in his immediate area, he was making job applications for positions in Oskaloosa, about a 30 to 40 minute drive.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work, and if so, whether it results in his disqualification.

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(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.

With regard to the May 7, 2010 offer of work, the claimant did not have an open claim at the time an offer of work was made, so his refusal on May 7 is not effective to disqualify him from benefits, regardless of whether it was a suitable offer of work.

Regarding the June 22 offer of work, the claimant did have an open benefit year at that time, so the offer and a refusal would have the potential for disqualification. The offer to return to his prior position was a suitable offer of work. 871 IAC 24.24(14). However, good cause for a refusal exists where the refusal is due to the claimant moving away from the location of the employment. 871 IAC 24.24(7), (13). The claimant did have good cause to refuse the offer of work with the employer on June 22. Benefits are allowed, if the claimant is otherwise eligible.

Where a refusal is for good cause such as the increased distance to the employer, the issue then arises as to whether the claimant has restricted the area of his availability so as not to be able and available for work. 871 IAC 23(18); 871 IAC 24.24(4). With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. The able and available/work search requirement is waived in the instance of a person who is only temporary unemployed, such as due to a short-term layoff. Iowa Code § 96.4-1. The waiver is typically allowed only for layoff period of four consecutive weeks or less. 871 IAC 24.2(1)(c)(3). It appears the claimant's current layoff has extended beyond that four-week period. While it appears that the claimant is currently not restricting the location scope of his work search to such a point so as to unduly limit his opportunity for employment even if he were required to perform a work search, the matter should be remanded to the Claims Section for consideration as to whether the waiver status should remain in place.

The administrative law judge further notes that the decision issued by the other administrative law judge in 10A-UI-09725-JTT contains a remand to the Claims Section for consideration of the

claimant's status as being adequately able and available for work due to a self-employment venture. While this administrative law judge has touched upon the able and available issue in this decision in terms of the distance from available work and the temporarily unemployed waiver, the question of the effect of a possible outside venture was not part of the consideration in this proceeding; nothing in this decision addresses or resolves the issue as remanded to the Claims Section in the 10A-UI-09725-JTT decision.

DECISION:

The representative's June 23, 2010 decision (reference 01) is modified with no effect on the parties. The claimant's refusal of work on May 7 cannot disqualify him as it was not during a period in which a claim for unemployment insurance benefits existed for the claimant. The claimant did refuse an offer of suitable work on June 22, during a time he did have an open claim, but the refusal was for good cause and for reasons which do not disqualify him; his location restriction regarding a potential employment is not such as to render him unable and unavailable for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for review of the temporarily unemployed able and available/work search waiver issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css