

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANNON D HARRIS
Claimant

FAIRFIELD ALUMINUM CASTING CO
Employer

APPEAL 17A-UI-01654-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/17
Claimant: Respondent (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 10, 2017, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 7, 2017. The claimant did not register a phone number with the Appeals Bureau and did not participate. The employer participated by way of Kris Boling, human resources. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so 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: The employer made an offer of work to claimant via phone on September 2, 2016. The claimant had been on layoff with a notice of recall being available. Per the employer's contract with the union which governed the claimant's employment, the claimant was responsible for keeping the employer apprised of his correct phone number. When the employer called the number on file, it was not in service. The employer then attempted to send a certified letter to the last-known address of the claimant (Employer Exhibit 1) and it was returned. The employer has had no additional contact with the claimant since he last physically worked on January 14, 2016, and received no response to attempts to reach him for a recall back to work. That offer included the following terms: a return to work, full-time, as a utility worker, making \$14.71 per hour, which was his wage before layoff. Work was available effective September 7, 2016. The administrative law judge would note the offer was made to the claimant in the prior and not current benefit year, with an original claim date of January 17, 2016. The claimant did have a valid claim for unemployment insurance benefits at the time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of 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. (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.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening 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.

The claimant was aware that he was subject to recall while on layoff as a utility worker from the employer. The employer attempted to communicate an offer to return to work, under the same conditions for which he had worked, to the claimant on September 2, 2016, via phone (which was not in service) and certified letter (which was returned). The administrative law judge is persuaded the offer was suitable and claimant did not have a good cause reason for the failure to accept it.

For the reasons that follow, the administrative law judge concludes claimant declined an offer of work because he was not available.

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 Admin. Code r. 871-24.23(41) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

Here, the claimant refused a recall to work, and was unresponsive to employer attempts to reach the claimant both by phone and certified mail. The claimant did not attend the hearing or offer a written statement in lieu of participation and offered no evidence to refute the employer's credible evidence. Therefore, the administrative law judge concludes the claimant was not available for work when he refused a recall offer by the employer on September 2, 2016.

The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work. Therefore, he is not disqualified from receiving benefits, but is not eligible beginning September 2, 2016. Benefits are withheld until such time as claimant makes himself available for work.

DECISION:

February 10, 2017 (reference 01) decision is reversed. The claimant declined an offer of work but was unavailable at the time. Benefits are withheld effective September 2, 2016, until such time as the claimant makes himself available for work.

REMAND: The issue of any overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs