

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD L COX
Claimant

APPEAL NO. 13A-UI-11887-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HORIZON EQUIPMENT
PUCK IMPLEMENT COMPANY**
Employer

OC: 05/12/13
Claimant: Respondent (1)

Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from the October 18, 2013, (reference 02) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on November 12, 2013. Claimant participated. Employer did participate through Marcy Puck, Human Resources Manager, Virgil Andresen, Service Manager and John Delaney, Aftermarket Manager.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time through May 14, 2013 when he was discharged. The claimant's 48-year-old sister died unexpectedly on May 4. She lived in western Nebraska, (a six-hour drive one way) and the claimant drove his Mother and his family there to help her high school age daughter deal with the death. The claimant's father was not well enough to make the trip. The claimant stayed with his sister's daughter until May 14 as his niece had just lost her Mother and was graduating from high school and she needed the support of her only family. He returned to town late the night of May 13. The morning of May 14, he texted his supervisor a message telling him that he needed some more time off from work. The claimant indicated that he felt bad asking for more time off and knew it was wrong but he just was not able to return to work. The claimant never told the employer he was going to work on his family farm and in fact that next week the claimant did not work on his farm. While he was gone his close friends went to his farm and put the chemicals on the field to help him out. The claimant simply needed time to recover from the death. The claimant had no prior issues with attendance. The employer never contacted the claimant personally to talk to him about the issues; the claimant was simply called and told he was discharged. Later when the employer realized that the claimant had not asked for time off to work on his farm, as the employer had incorrectly assumed, but that he just needed time to recover from the sudden death, he was offered his job back. The employer offered the claimant his job back but told him that if he did return he would have to work

Saturdays. The claimant had not previously worked Saturday. The claimant had such hard feelings because of the way the employer had treated him, that he refused the offer of work. The claimant could not understand how it took the employer a month and one-half to realize that they had mistakenly assumed his reason for needing additional time off. The employer could have simply called the claimant and spoken to him when he asked for more time off instead of jumping to conclusions about the claimant's need for time off.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code section 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(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 section 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.

The administrative law judge determines that the offer was unsuitable. The claimant was going to be required to work Saturday and was told he had to return with a good attitude. The claimant was not the party who jumped to conclusions about the need for his absence, it was the employer. Under all of the circumstances the administrative law judge concludes that the offer was unsuitable. The claimant did not refuse a suitable offer to return to work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 18, 2013, reference 02, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs