

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL L ROBERTS
Claimant

APPEAL NO. 19A-UI-04852-S1-T
ADMINISTRATIVE LAW JUDGE
DECISION

SHOVEL 1 INC
Employer

OC: 02/10/19
Claimant: Respondent (1)

Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Shovel 1 (employer) appealed a representative's June 14, 2019, decision (reference 03) that concluded Michael Roberts (claimant) eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2019. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Andrew C. Barber, Owner.

ISSUE:

The issue is whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from May 3, 2017, to February 12, 2019. He was laid off for two to four weeks in the winter months of 2017 and 2018. The employer laid the claimant off again on February 12, 2019.

The claimant filed on February 10, 2019, and reopened his claim for unemployment insurance benefits with an effective date of February 29, 2019. The claimant's average weekly wage during his highest quarter of wages was \$812.86.

On May 15, 2019, the owner sent a text to the claimant saying, "If you are interested in having your job back, I need you to call me today". On May 17, 2019, the claimant and the owner spoke on the telephone. The owner asked the claimant if he wanted to come back. The claimant inquired about a raise and forgiveness of debt and the owner denied the request. There was no other discussion of wages, hours, or starting date. The claimant said he would think about it. The conversation occurred thirteen weeks after he filed for unemployment insurance benefits. On May 17, 2019, the claimant sent the employer a text saying, "I'm going to pass but I'd like to thank you for the opportunity."

The owner has seen the claimant mowing and believes that he is able and available for work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work.

Iowa Code section 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".

Before a claimant can be disqualified from receiving unemployment insurance benefits for refusing an offer of suitable work, the claimant must be able and available for work. 871 IAC 24.24(4). The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There was no evidence presented that show any restriction or limitation on employability.

The administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 work was offered within thirteen weeks of the claimant's unemployment and was required to provide the claimant wages seventy-percent of those paid to the claimant during the highest quarter of his base period. The claimant could reasonably refuse wages of \$640.00 per week. The evidence fails to establish that the claimant would have received at least seventy percent of his average weekly wages during his highest quarter of earnings. The employer did not tell the claimant the rate of pay, the starting date, or the hours of work. Without this information, there was not a bona fide offer of work. The claimant could not calculate whether the employer's offer met the requirements. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's June 14, 2019, decision (reference 03) is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs