

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BOBBY L BURLEY
Claimant

L A LEASING INC
Employer

APPEAL 15A-UI-05673-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/16/14
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available
Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from the May 6, 2015, (reference 08) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. Claimant participated. Employer participated through Colleen McGuinty, Unemployment Insurance Benefits and Tanner McCutcheon, Administrative Assistant.

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: On April 1 Mr. McCutcheon spoke to the claimant and offered him work to begin at Rock Tenn on April 2, 2015. The claimant had worked there previously and was offered full time at the same rate of pay of \$8.00 per hour. As part of his regular course of business, Mr. McCutcheon regularly makes notes of his conversations. The claimant specifically told Mr. McCutcheon that he was not interested in going back to work for Rock Tenn. At hearing the claimant indicated he had begun a new job on March 30, 2015 and agency records reflect that he has not claimed unemployment insurance benefits since the week ending March 28, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The administrative law judge concludes that the employer offers the more credible testimony regarding an actual offer of work made. Mr. McCutcheon's notes were made at the time the offer was made in the regular course of business. The employer did make an offer of work to the claimant on April 1. The offer may have been suitable, but the reason for the failure to accept the work was because claimant was not available for work as he was working for another employer at the time. Therefore, claimant is not disqualified from receiving benefits, provided he is otherwise eligible.

The issue of overpayment is moot since the claimant has not claimed any unemployment insurance benefits since the offer was made and refused.

DECISION:

The May 6, 2015, reference 08, decision is affirmed. Claimant did decline an offer of work but was unavailable at the time.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css