

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARSHALL J NASERS

Claimant

APPEAL NO. 10A-UI-16689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & S CONVENIENCE STORES INC

Employer

OC: 10/17/10

Claimant: Appellant (5)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Marshall J. Nasers (claimant) appealed a representative's November 24, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits because of a refusal of an offer of work with D & S Convenience Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 21, 2011. The claimant participated in the hearing. Sue Steichen appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The employer owns or owned two convenience store businesses, both of which had a location in Le Mars, Iowa: Le Mars Car-Go, Inc. (Car-Go 1) and D & S Convenience Stores, Inc. (Car-Go 2). The claimant started working for the employer in Car-Go 1 on or about June 1, 2009. He worked part-time (8 – 16 hours per week) as a cashier. From mid-August 2009 into early October 2009, the claimant also worked part-time at Car-Go 2. The claimant believed that his employment at Car-Go 2 ended because the employer had discharged him. He also believed that he only maintained his employment at Car-Go 1 because of supposed intervention of his mother, the manager of Car-Go 1. However, Ms. Steichen, one of the owners and a more active manager at Car-Go 2, had never told the claimant he was discharged, and had not attempted to discharge him from Car-Go 1. The claimant believed he had been discharged because his mother had indicated that she believed he had been discharged from Car-Go 2. While he was no longer being scheduled at Car-Go 2, this was because he had only been needed at that location temporarily until another employee was hired.

The claimant continued working at Car-Go 1 through October 2. He was effectively laid off for lack of work on October 10, as that store was closed that day, and closed completely as of

about October 12. The claimant established an unemployment insurance benefit year effective October 17, 2010.

The claimant's mother continued to work for the employer for a short period doing some close down functions. Ms. Steichen asked the claimant's mother if the claimant would be willing to accept a similar position back at the other store, Car-Go 2. The claimant's mother communicated this offer to the claimant on or about October 19. After some discussion, he decided he did not wish to accept the offer, which the claimant's mother communicated back to Ms. Steichen.

The claimant's reason for declining the offer was that he felt he had been unfairly fired from Car-Go 2 in October 2009. He felt Ms. Steichen showed too much preferential treatment to some employees, and he believed that returning to that work situation would be too stressful and would only result in his being discharged again in short order.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work, and if so, whether it was refused for good cause.

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.

While the contact by the employer to the claimant through the claimant's mother is somewhat tenuous and not the best of methods, it does appear that at the time the claimant's mother was still in a role where she could act as an agent of the employer for purposes of communicating an offer of work. The work offered was comparable to his prior employment. On October 19 a bona fide offer of suitable work with the employer was in fact communicated to the claimant, and he did make a definite refusal. 871 IAC 24.24. The remaining question is then whether the refusal was for a good cause. 871 IAC 24.24(3).

The reason for the claimant's refusal was his belief that he had previously been discharged from employment with the employer, and believed that the work environment would be hostile so as to end in discharge. An employee who has quit employment because of an intolerable work situation and who is again offered employment with that same employer has good cause for declining that offer of work if the conditions have not changed. 871 IAC 24.24(14). However, the claimant did not quit his employment with Car-Go 2 (D & S Convenience Stores, Inc.) for any reason, so this provision does not even apply to his situation. His personal beliefs that he had been discharged in October 2009 or that the work conditions would become intolerable or that he would only be discharged again do not qualify as good cause for not accepting the offer of suitable work. As of October 19, 2010, benefits are denied until he has earned ten times his weekly benefit amount in other employment.

DECISION:

The representative's November 24, 2010 decision (reference 01) is affirmed. The claimant did refuse a suitable offer of work without good cause. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw