

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BUDDY L KRISE
Claimant

APPEAL NO. 09A-UI-14839-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CCO INC
Employer

**Original Claim: 10/05/08
Claimant: Respondent (2)**

Iowa Code section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 30, 2009, reference 04, decision that allowed benefits based on an Agency conclusion that the claimant refused an offer of employment on June 4, 2009 for good cause. After due notice was issued, a hearing was held on November 3, 2009. Claimant Buddy Krise participated. Duane Bachus, Human Resources Officer, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, and Three into evidence.

ISSUES:

Whether the claimant refused to accept a suitable offer of employment without good cause.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Buddy Krise was employed by CCO, Inc., as a full-time welder from August 2006 until December 12, 2008, when the employer laid him off due to a shortage of work orders. Mr. Krise had been assigned to the first shift. Mr. Krise's immediate supervisor has been Jim Schell, Weld Shop Supervisor. Mr. Krise's final wage had been \$10.30 per hour.

At the beginning of June 2009, the employer desired to recall Mr. Krise to the employment. Duane Bachus, Human Resources Manager, lacked a telephone number for Mr. Krise, so he directed Mr. Schell to contact Mr. Krise and tell him the employer wanted to speak to him about a recall to the employment.

On June 4, Mr. Bachus spoke with Mr. Krise and told him he could return to the employment the following Monday, June 8, 2009 under the same wage he had received previously and under similar work hours. Other conditions of employment would remain as they had been prior to the

lay off. Mr. Krise told Mr. Bachus he accepted the employer's offer of a recall and agreed to appear for work on June 8, 2009.

On June 8, Mr. Krise appeared at the workplace, but not for the purpose of returning to the employment. Instead, Mr. Krise told Mr. Bachus he would not be returning to the employment because he had another work venture he wanted to pursue, an out-of-state carpentry position wherein Mr. Krise would be an independent contractor. That venture would not start for another week. That venture fell through. After Mr. Krise notified the employer he would not be returning to his position, Mr. Krise made no further contact with the employer until November 3, 2009, the date of the appeal hearing. Mr. Krise's purpose in contacting the employer at that time was to gain a better understanding of what the appeal hearing would be about, not contact to pursue a return to the employment.

Mr. Krise had an active claim for extended unemployment compensation (EUC) benefits at the time the employer recalled him to the employment and he rejected the recall. For the period of June 7, 2009 through October 3, 2009, Mr. Krise received EUC benefits totaling \$3,942.42. For the same period, Mr. Krise has received \$300.00 in federal stimulus benefits. Mr. Krise's eligibility for the federal stimulus benefits has been contingent upon him being eligible for the EUC benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(b) provides, in relevant part, as follows:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause ... to accept suitable work when offered that individual. ... 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

871 IAC 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 evidence in the record establishes that the employer made a bona fide offer of employment to Mr. Krise on June 4, 2009. Though Mr. Krise initially accepted the offer of recall, he subsequently notified the employer on June 8 that he was rejecting the offer of recall. The recall was to the same work and work conditions from which Mr. Krise had been laid off in December 2008 and was suitable employment. The opening was not attributable to a labor dispute. The employer would not require that Mr. Krise join a union or refrain from joining a union. There is no indication that the wages, hours, or other conditions of the offered work would have been substantially less favorable to Mr. Krise than conditions prevailing for similar work in the locality. Mr. Krise's rejection of the work for a self-employment venture that had not yet materialized was without good cause.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Krise refused an offer of suitable employment from CCO, Inc. Effective the benefit week that ended June 9, 2009, Mr. Krise is disqualified for benefits until he has worked in and been paid for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged for benefits paid since the week ending June 9, 2009.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Mr. Krise has received benefits for which he was ineligible, those benefits constitute an overpayment that Mr. Krise must repay. Mr. Krise is overpaid EUC benefits totaling \$3,942.42 for the period of June 7, 2009 through October 3, 2009. Mr. Krise is overpaid \$300.00 in federal stimulus benefits for the same period. The total overpayment is \$4,242.42. Mr. Krise must repay that amount to Iowa Workforce Development.

DECISION:

The Agency representative's September 30, 2009, reference 04, decision is reversed. On June 8, 2009, the claimant refused an offer of suitable employment from the former employer without good cause. Effective June 7, 2009, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant on or after June 7, 2009. The claimant is overpaid \$4,242.42.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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