

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES M WELSH
Claimant

APPEAL NO. 08A-UI-03577-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILAM CONCRETE & CONSTRUCTION INC
Employer

OC: 01/27/08 R: 02
Claimant: Respondent (1)

Section 96.5(3)(A) – Refusal of Suitable Work
871 IAC 24.24(14) – Employment Offer From Former Employer

STATEMENT OF THE CASE:

Milam Concrete & Construction, Inc., filed a timely appeal from the April 9, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 29, 2008. Claimant James Welsh participated. Terry Milam, owner, represented the employer and presented additional testimony from Dennis Milam, Foreman. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Welsh worked for Milam Concrete & Construction as a full-time laborer until the employer ceased performing concrete work during the winter and laid him off. The employer does concrete flat work and works primarily on residential projects. Mr. Welsh was friends with Terry Milam, who owns Milam Concrete & Construction, and Dennis Milam, Foreman. Terry and Dennis Milam are brothers. Terry Milam also has a winter snow removal business. During the period of the layoff, Mr. Milam enlisted Mr. Welsh's assistance in completing one or more snow removal projects. Both parties considered this work outside Mr. Welsh's normal employment.

On March 13, 2008, Terry Milam telephoned Mr. Welsh and told Mr. Welsh that he was being recalled to the concrete work effective Monday, March 17. Mr. Welsh said, "Okay." Both parties understood that Mr. Welsh would receive the \$15.00 hourly wage he had received prior to the layoff and that all other terms of the employment would be the same as prior to the lay-off. Mr. Welsh's wage was at the high end of the wage generally paid in the area to non-supervisory concrete laborers. During the conversation on March 13, Mr. Welsh asked Mr. Milam whether he had the money he still owed Mr. Welsh for helping with snow removal. Mr. Milam owed Mr. Welsh approximately \$50.00. Mr. Milam indicated that he had no money to give Mr. Welsh. Mr. Welsh voiced concern about whether Mr. Milam would be able to pay his wages for concrete work in light of Mr. Milam's assertion that he had no money to pay Mr. Welsh for the snow removal.

Mr. Welsh did not appear for work on March 17. Mr. Welsh did not appear for work on March 18 or 19. On March 19, Dennis Milam located Mr. Welsh's home and spoke with Mr. Welsh. Mr. Milam asked Mr. Welsh if he would be returning to the employment. Mr. Welsh said that Monday, March 17, had been his birthday and that he had not felt like going to work. The conversation became heated and Mr. Milam departed. A few minutes later, Mr. Welsh called Dennis Milam to apologize for the heated exchange. Mr. Welsh indicated that he was waiting to hear about a job with another concrete contractor. Mr. Welsh did not return to Milam Concrete & Construction, Inc. Instead, on April 8, Mr. Welsh started full-time employment with the other concrete contractor.

Mr. Welsh did not continue his claim for unemployment insurance benefits beyond the benefit week that ended March 22, 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

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 Terry Milam made a bona fide offer of employment to Mr. Welsh and that Mr. Welsh rejected the offer by failing to return to the employment. The further employment offered by the employer was reasonably suitable and comparable to the work Mr. Welsh had previously performed for the employer. However, Mr. Welsh had legitimate concerns about Terry Milam's ability to pay him for his work and, therefore, was justified in declining to return to the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Welsh rejected the employment offer from Milam Concrete & Construction for good cause. Accordingly, Mr. Welsh's rejection of the employment offer did not disqualify Mr. Welsh for unemployment insurance benefits.

DECISION:

The Agency representative's decision dated April 9, 2008, reference 01, is affirmed. The claimant had good cause for refusing the recall to employment from the former employer. The claimant was eligible for benefits, provided he was otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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