

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEAN S COOPER
Claimant

LARRY YODER MASONRY INC
Employer

APPEAL 19A-UI-01327-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/27/19
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 8, 2019, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 28, 2019. Claimant did not participate. Employer participated through Pat Yoder. Official notice was taken of the fact-finding documents and claimant's wage record.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The employer is claimant's sole base-period employer. Claimant worked for the employer as a mason laborer until January 8, 2019. At that time claimant stopped showing up to work at the job where he was assigned. The employer had work available, had claimant come to the job site. The employer tried contacting claimant multiple times. This included a text message sent on January 16, 2019, which informed claimant if he did not respond he would be deemed to have voluntarily resigned employment. The last communication the employer had with claimant was a message sent on January 21, 2019 informing him that his final paycheck and W-2 were ready to be picked up. The employer has not had any contact with claimant, to offer him work or for any other purpose, since January 21, 2019. Claimant filed his initial claim for benefits for the week beginning January 27, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant.

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.

Here, it does not appear claimant was made or refused a suitable offer of work. Rather, it appears he was separated from employment with his base period employer. To the extent that any offer of work was made, the administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since any offer of employment would have taken place outside of the benefit year, as the employer's last communication with claimant was January 21, 2019. Benefits are allowed, provided claimant is otherwise eligible, however, the issue of his separation must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

DECISION:

The February 8, 2019, (reference 01) decision is affirmed. Employer did not communicate an offer of work to claimant. To the extent that any offer of work was made, it would be outside of his benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The issue of claimant's separation from this employer is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs