

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A FRITZ
Claimant

APPEAL NO. 11A-UI-15346-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIOUS KOUNTRY AUTO COLLISION
CENTER INC**
Employer

**OC: 10/17/10
Claimant: Respondent (1)**

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 21, 2011, reference 01, that concluded he was not subject to disqualification for failing to accept work. A telephone hearing was held on December 22, 2011. The claimant participated in the hearing. Kirk Kious participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show he filed a new claim for benefits effective October 17, 2010. His average weekly wage based on his high quarter of earnings in his base period was \$895.91. He was required to file for a second benefit year and mistakenly was found eligible because another employer for whom the claimant had never worked misreported wages. This was discovered and no second-year benefit claim was established. He went back to receiving EUC benefits, which are not chargeable to the employer. Official notice is also taken of latest Iowa Workforce Development "Occupational Employment Statistics Wages Survey" for Northeast Iowa, which shows that the mean hourly wages for the area for Automotive Body and Related Repairers is \$15.74 per hour (<http://iwin.iwd.state.ia.us/pubs/oeswage/oeswagenebalance.pdf> page 10). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as an auto body technician from August 2001 to October 10, 2010, when he was laid off. He was working full time at a rate of pay of \$19.00 per hour with vacation and benefits when he was laid off.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 17, 2010. His average weekly wage based on his high quarter of wages in his base period was \$895.91. He has been unemployed since that time. He exhausted his regular

unemployment insurance benefits and has received Emergency Unemployment Compensation (EUC) since then.

The claimant was required to file for a second benefit year effective October 16, 2011, and mistakenly was found eligible for regular benefits because another employer for whom the claimant had never worked misreported wages under his social security number. After the error was discovered, no second-year benefit claim was established. The claimant went back to receiving EUC. The employer received notice of the claimant's second-year benefit claim.

On November 1, 2011, the owner of the employer, Kirk Kious, offered the claimant a job working as an auto body technician. The job was full time and paid \$12.50 per hour with no benefits. Kious told the claimant that he would review the wage and benefit situation after six weeks. The claimant countered-offered to work for \$15.00 per hour but Kious turned down the offer. The claimant told the employer that he would think about the offer and get back to the employer.

The claimant contacted the Decorah Workforce Development Center and was told that he was not required to accept the offer of work based on the wages offered. This advice was likely based on a mistaken belief that he had established a second-benefit year claim effective October 16, 2011.

Based on the advice given to him that wages offered were too low and because he received notice of the fact-finding interview regarding his work refusal a couple of days after November 1, the claimant never got back to Kious regarding the job offer. He did not believe the wages offered were high enough and was unhappy with having to start all over again with no benefits.

The mean hourly wage rate for Automotive Body and Related Repairers is \$15.74 per hour based on the latest "Occupational Employment Statistics Wages Survey" conducted by Iowa Workforce Development for Northeast Iowa.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause. The following legal principles must be considered.

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....

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.

The law also states that notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied if the wages are substantially less those prevailing for similar work in the locality. Iowa Code § 96.5-3-b(1). The unemployment insurance rules require a personal offer of work to an actual job opening and a definite refusal of the offer before a claimant can be found to have refused an offer of suitable work. 871 IAC 24.24(1). Finally, the rules state the wages formula of Iowa Code § 96.5-3-a is based on the number of weeks that have elapsed following the effective date of the most recent new or additional claim filed by the claimant. 871 IAC 24.24(15)i.

First, I believe the Agency mistakenly decided that job was unsuitable because the offer was made within three weeks of the most recent new or additional claim and did not offer him 100 percent of his average weekly wage based on his high quarter wages. In fact, the claimant has not established any new or additional claims for benefits since October 17, 2010, and the offer of work was made on November 1, 2011—54 weeks later. As a result, the proper percentage to apply would be 65 percent of the average weekly wage, which would calculate to \$14.55 per hour. The wages offered still would be unsuitable under Iowa Code § 96.5-3-a. In addition, I would conclude the work was suitable based on Iowa Code § 96.5-3-b(1) because the wages offered were substantially less than the prevailing rate of pay for similar work in the Decorah area.

Finally, while there was an personal offer of work made by the owner, Kirk Kious, the claimant's response that he would think about the offer and get back to the employer falls short of the rule's requirement that there be a definite refusal by the claimant before he is disqualified under Iowa Code § 96.5-3-a.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. Since the work offered did not meet the standard for suitability, the claimant's failure to accept the job is not evidence that the claimant is not able to and available for work. The preponderance of the evidence shows the claimant is able to and available for work.

The employer, however, is not chargeable for any benefits paid to the claimant because he is receiving EUC not regular unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated November 21, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs