

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KEVIN M KARTEL**  
Claimant

**L A LEASING INC**  
Employer

**APPEAL 17A-UI-05045-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/17  
Claimant: Respondent (1)**

Iowa Code § 96.5(3)a – Failure to Accept Work/Work Refusal  
871 IAC 24.24(14)(b) – Suitable Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 8, 2017, (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 30, 2017. The claimant participated personally. The employer participated through unemployment benefits administrator Colleen McGuinty. Diane Ungs, branch manager, also testified for the employer. Claimant exhibits A and B were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant refused a suitable offer of work for paint prep on April 12, 2017.

**FINDINGS OF FACT:**

The claimant previously worked for the employer as a laborer/assembler, earning \$12.50 per hour, from March 23, 2017 until March 27, 2017, when the assignment ended.

The evidence is disputed as to whether an actual offer of work was made to the claimant to work as a paint prep person for Farmtek, effective April 17, 2017. According to the claimant, while talking to Diane Ungs, and declining an unrelated position on April 12, 2017, she referenced that if the claimant was willing to do heavy lifting, Farmtek also had paint prep positions available. The claimant did not consider this to be an offer of work as it was in passing while visiting the employer, and details were not discussed beyond the heavy lifting. Ms. Ungs attended the hearing and stated she did formally offer the position in person to the claimant, warning of heavy lifting and he declined due to physical restrictions. Ms. Ung's testimony contradicted the employer's record of work refusal, (Claimant exhibit B) which stated Michelle Goeken called the claimant to extend the offer of work to him on April 12, 2017. Ms. Goedken did not attend the hearing or provide a written statement in lieu of attending.

The claimant's average weekly wage is \$676.50. The offer was made in the eleventh week of unemployment. Consequently, the wage offered must equal or exceed seventy-five percent of her average weekly wage. Seventy-five percent of the claimant's weekly wage is \$507.67.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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. 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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant was not actually issued an offer of work for paint prep. The administrative law judge found the claimant's denial of an offer being communicated to be more credible than the conflicting testimony of Ms. Ungs in comparison to the employer's record of refusal (Claimant exhibit B). The administrative law judge is persuaded that mere referencing by Ms. Ungs of a paint prep position that would require heavy lifting is not sufficient as an offer. Since no offer of work was actually made, benefits are allowed.

**DECISION:**

The May 8, 2017 (reference 03), decision is affirmed. The claimant did not refuse a suitable offer of work because the employer did not communicate an offer of work to claimant. Benefits are allowed, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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