

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JACOB R BROTHERSEN
207 N PINE
NEW LONDON IA 52645

GRIFFIN MUFFLER & BRAKE CENTER
535 AVE G
FORT MADISON IA 52627

Appeal Number: 05A-UI-04459-DT
OC: 04/03/05 R: 04
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Griffin Muffler & Brake Center, L.L.C. (employer) appealed a representative's April 25, 2005 decision (reference 01) that concluded Jacob R. Brothersen (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2005. The claimant participated in the hearing and presented testimony from one other witness, Trent Hobbs. Nannette Griffin appeared on the employer's behalf. One other witness, Clark Griffin, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse a offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on July 30, 2004. As of approximately December 1, 2004, he worked full time as a mechanic in the employer's New London, Iowa automotive muffler and brake business. His rate of pay was \$7.25 per hour. His last day of work was February 3, 2005. On that date, he was informed that the employer's New London, Iowa business would be closing. He had previously been advised that upon completion of his coursework for an associate degree, he would receive a raise. He received an associate degree in December 2004 for diesel mechanics; he did not receive his actual diploma until early February, after the employer's New London operation had closed, so he had not yet received any raise.

On February 3, 2005, at the time the employer informed the claimant that the New London operation was closing effective immediately, the employer also gave the claimant an offer of full-time employment as a mechanic in the employer's Fort Madison, Iowa location at the rate of \$8.00 per hour. The employer's Fort Madison location is approximately 30 miles from what had been the employer's New London location. On February 4, 2005, the claimant verbally declined the offer.

The claimant established an unemployment insurance benefit year effective April 3, 2005. Based on the claimant's weekly average wage for the high quarter of his base period of \$201.20, his weekly benefit amount was determined to be \$113.00. On April 22, 2005 the employer sent the claimant a certified letter he received April 25, 2005. The letter reiterated the standing job offer of employment by the employer to the claimant as a full-time mechanic at the employer's Fort Madison location at the rate of \$8.00 per hour, plus time and a half over 40 hours. The claimant went to the Mount Pleasant Agency office on or about April 26, 2005 and showed a workforce advisor a copy of the employer's letter with the attached notice of job opening the employer had posted with the Agency seeking a full-time mechanic at the Fort Madison location. The workforce advisor indicated that the employer's job offer was an attempt to relieve it of responsibility for paying unemployment insurance benefits, and advised that the claimant not respond.

The going rate in the county for a general automotive technician was approximately \$7.96; the going rate for a diesel mechanic was approximately \$11.00 per hour. While the claimant was qualified to be a diesel mechanic, the employer had utilized him only as a general mechanic. The claimant determined by looking at Internet websites that he might be able to make as much as \$13.00 or \$15.00 as a diesel mechanic. He made job applications for positions as a diesel mechanic 20 miles and further away from New London, but had not received any job offers. Because the claimant was upset about how the employer had closed the New London facility with no notice, because he felt he was qualified for positions paying more than \$8.00 per hour, because he believed that the employer's job offer was not bona fide as he did not believe there was room in the employer's Fort Madison operation for another full time mechanic, and because of the advice given by the workforce advisor, the claimant determined to reject the employer's offer by not responding.

The claimant has received unemployment insurance benefits after the offer of employment received April 25, 2005 in the amount of \$339.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code Section 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. 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.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit

year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

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.

In this case, the February 3, 2005 offer of work occurred before the claimant established his claim for unemployment insurance benefits, and cannot serve as the basis for disqualification. Benefits are allowed as of February 3, 2005 if the claimant is otherwise eligible.

However, the offer of work received April 25, 2005 occurred after the claimant established his claim for unemployment insurance benefits. By definition, since the employer's offer of work was more than 100 percent of his high quarter average weekly wage, the employer's offer is generally deemed "suitable." Even though the claimant might be now educationally qualified for higher paid positions, he is still restricted by his base period average weekly wage in the determination as to what would be a "suitable" wage. He has further not demonstrated that he in fact has the necessary combination of education and experience to command a higher wage. The claimant has not established that the employer's offer was anything other than what it appears to be on its face – a bona fide offer of actual full-time employment. The fact that the employer might have been motivated to make the offer in order to relieve itself of liability for unemployment insurance benefits does not alter the truth of the matter that making a bona fide offer of employment to a former employee is a legitimate manner for a former employer to relieve itself of liability. While it is unfortunate that the claimant at least understood the advice of a workforce advisor to mean that he could ignore the offer, this does not change the fact that under the law, the claimant was obligated to accept a suitable offer of work unless he had other good cause for declining the offer.

The fact that the position is about 30 miles further in driving was not the claimant's critical deciding point; he was already seeking employment at least 20 miles away, and the position the employer was offering 30 miles away was not significantly outside the range of distance that the claimant would need to include in the scope of his job search; it already would have paid an additional amount beyond what the claimant had previously been paid and beyond his average weekly wage, so as to offset any increase in his travel expense.

The claimant refused a suitable offer of work without good cause. Effective the week ending April 30, 2005, the claimant is disqualified from unemployment insurance benefits until he has requalified by earning ten times his weekly benefit amount.

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 the claimant refused a suitable offer of work, after that refusal benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's April 25, 2005 decision (reference 01) is modified in favor of the employer. The claimant did not refuse a suitable offer of work within his claim year on February 3, 2005. However, he did refuse a suitable offer of work within his claim year during the week ending April 30, 2005. As of the week ending April 30, 2005, the claimant is not qualified to receive unemployment insurance benefits. The claimant is overpaid benefits in the amount of \$339.00.

ld/s