

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W FREEMAN
Claimant

APPEAL NO: 10A-UI-04610-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

JG SERVICE / JEFF GOULD
Employer

OC: 02/15/09

Claimant: Appellant (4)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Robert W. Freeman (claimant) appealed a representative's March 17, 2010 decision (OC 02/15/09 – reference 01) that concluded he was not qualified to receive unemployment insurance benefits as a result of a refusal of work with J G Service / Jeff Gould (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on April 28, 2010. This appeal was consolidated for hearing with two related appeals, 10A-UI-04611-D and 10A-UI-04740-D. The claimant participated in the hearing and was represented by Jamie Deremiah, Attorney at Law. Jeff Gould appeared on the employer's behalf. 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:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The claimant started working for the employer near the end of May 2000. He worked full time as an office furniture serviceman/installer at a specific business client's worksite; he was being paid \$18.00 per hour for his work under this arrangement. His last day of work at that business client was December 31, 2008. The business client ended its relationship with the employer as of that date. Beginning January 1, 2009 the employer continued to provide work for the claimant out of its primary business location, but at a reduced hourly rate of \$15.00. The claimant's last day of work for the employer was on or about February 19, 2009; the employer laid him off for lack of work at that point.

The claimant established an unemployment insurance benefit year effective February 15, 2009. His weekly benefit amount was calculated to be \$361.00, based on an average weekly wage during the high quarter of his base period of \$775.38. He filed weekly claims and received unemployment insurance benefits from the week ending February 21, 2009 through February 13, 2010; after August 22, 2009 the benefits were issued under the Emergency Unemployment Compensation (EUC) program and were not chargeable to the employer.

On May 28, 2009 the employer contacted the claimant and offered him the opportunity to return to work starting June 1; the initial project identified by the employer would have lasted between three and four weeks, but the employer contemplated that additional work projects would become available. The claimant declined the offer, indicating he was planning to take a vacation trip the second week of June, that he did not want only a short-term project, and that he wanted \$18.00 per hour, rather than the \$15.00 the employer offered. He was also concerned that the work would be with a business client for which he had worked prior to going to work for the employer, and he was concerned that there might be some hard feelings against him, but there had not been any specific fallout between the claimant and this former employer or any incidents indicating some ongoing overt resentment against him.

On June 19, 2009 the employer again contacted the claimant and offered him the opportunity to return to work on a project to start the following week at another business client's location that would have lasted about six weeks; the employer still contemplated that additional work projects would become available. The claimant again declined the offer, once more indicating that he did not want only a short-term project, and that he wanted \$18.00 per hour, rather than the \$15.00 the employer offered. On both offers, the claimant indicated an additional reason he declined to return to work with the employer was that he assumed the most substantial or best work would be given to family members of Mr. Gould who worked in the business.

Once the claimant's 2009 claim year expired as of February 13, 2010; he filed to establish a second claim year effective February 14, 2010. The employer was sent a notification of this claim, to which it responded by protesting due to the claimant's refusals of work.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work, and if so, whether this was disqualifying to him.

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. 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.

The employer did make a bona fide offer of work to the claimant, and the claimant did refuse or decline the offer, both on May 28, 2009 and June 19, 2009.

The offers were both monetarily suitable by law. The offer on May 28 was during the 15th week of the claimant's unemployment claim, and the offer on June 19 was during the 18th week of the claimant's unemployment claim. An offer therefore was monetarily suitable if it was for at least 70 percent of the claimant's high quarter average weekly wage, which would be \$542.77, or \$13.57 per hour. Iowa Code § 96.5-3-a(3); 871 IAC 24.24(15)i. The \$15.00 per hour offered by the employer satisfied this.

As to whether the offers of work were otherwise "suitable," reviewing the criteria set out in 871 IAC 24.24(15), the administrative law judge finds that the offers were suitable. Recall to work which could be of a somewhat temporary duration is not per se unsuitable; further, the claimant had a reasonable expectation that once he returned to work, additional continuing work would be available, as evidenced by the fact that continuing work for at least six weeks became available at about the same time the initial three to four week work project would have ended. None of the other reasons provided by the claimant arise to the level of rendering the offer of work unsuitable.

The claimant's best argument as to the May 28 offer being non-disqualifying would be that he was "unavailable" for work for the week ending June 13, which could be a basis for disqualifying him for benefits for that week alone, rather than as a general disqualification for refusal. 871 IAC 24.24(4). The administrative law judge does not however find that in this case even a refusal due to a plan to take a vacation for one of the weeks offered is adequate to treat the refusal of the May 28 offer as an availability issue rather than a refusal issue. Further, the administrative law judge notes that the claimant filed a weekly claim and received unemployment insurance benefits for all of the weeks in which he could have been working had he accepted the offer, including any week he would theoretically been out of town and unavailable for work and therefore ineligible to receive unemployment insurance benefits. 871 IAC 24.23(25). Finally, even if the May 28 refusal would be for good cause due to being unavailable for work, the June 19 refusal has no similar argument. As a result, as of May 28, 2009, benefits are denied until such time as the claimant has requalified. As the representative's

decision imposed the disqualification as of May 21 rather than May 28, 2009, the decision is hereby so modified.

DECISION:

The representative's March 17, 2010 decision (OC 02/15/09 – reference 01) is affirmed as modified. The claimant did refuse suitable offers of work without good cause. As of May 28, 2009 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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