

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY D RILES

Claimant

APPEAL NO. 10A-UI-01737-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C E CONTRACTING LTD OF IOWA

Employer

OC: 12/13/09

Claimant: Respondent (1)

Section 96.5-3-a – Offer of Work

STATEMENT OF THE CASE:

C E Contracting Ltd. of Iowa filed a timely appeal from a representative's decision dated January 29, 2010, reference 02, which allowed unemployment insurance benefits. After due notice, a telephone hearing was held on April 20, 2010. The claimant participated personally. Participating on behalf of the claimant was Kristen N. Ollenburg, Attorney at Law. The employer participated by Ms. Lynn Alcott, Office Manager.

ISSUE:

At issue is whether the claimant has refused a bona fide offer of suitable work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Gary Riles was previously employed by this company when it operated under the name of Edwards Contracting. Mr. Riles last worked for the company in November of 2008, working as a full-time truck driver and being paid by the hour. The claimant was separated from employment due to lack of work. During the course of his employment with Edwards Contracting Mr. Riles had issues with the amount of pay he received per diem and an issue with the company regarding purchases that he had made on behalf of the company. The claimant had disputed the matter that the company had reimbursed him believing that the reimbursement by per diem pay caused him to pay income taxes on the amounts that were not justified.

On or about April 1, 2009 Mr. Riles was contacted by Dennis Pederson, the company owner. Mr. Pederson indicated that the company was now operating under the name of C E Contracting Ltd. of Iowa. Mr. Pederson made a general inquiry as to whether the claimant would be interested in returning to work. No specifics were given to the claimant regarding beginning dates, pay, duties or per diem pay. Based upon the lack of specifics given to him during the call the claimant did not initiate employment with C E Contracting Ltd. of Iowa.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 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.

Based upon the evidence in the record the administrative law judge concludes that a bona fide offer of work was not made to Mr. Riles during the telephone call on or about April 1, 2009. Mr. Riles testified that he was not informed of an actual job opening and no information was provided as to pay, exact duties, hours or per diem pay and then based upon the lack specific information or a specific offer, he did not initiate employment with C E Contracting Ltd. of Iowa.

The employer in this matter has offered hearsay evidence in support of its position. Although hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. Based upon the facts of this case and the application of the law, the administrative law judge concludes that a bona fide offer of work was not made to the claimant. Therefore, the claimant's refusal does not disqualify him from the receipt of unemployment insurance benefits.

DECISION:

The representative's decision dated January 29, 2010, reference 02, is affirmed. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css