

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMES S SHIMEK
Claimant

APPEAL NO: 19R-UI-01464-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

OC: 06/10/18
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin Code chapter 25- Benefit Payment Control

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 31, 2018, (reference 03) unemployment insurance decision that denied benefits. A first hearing was scheduled between the parties on January 25, 2019. The claimant/appellant failed to appear at the hearing, and the appeal was dismissed. Upon a remand decision from the Employment Appeal Board, the appellant's request to reopen the hearing was granted. The parties were properly notified about the second hearing. A telephone hearing was held on March 6, 2019. The hearing was held jointly with 19R-UI-01465-JC-T. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Kara Close, Quality Control Auditor II, testified for IWD. Department Exhibits 1-4 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.

ISSUES:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason? Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established his claim with an effective date of June 10, 2018. Based upon the US Department of Labor guidelines, claims are selected at random for audits, and the claimant was participated in a fact-finding interview with Ms. Close on September 15, 2018. Based upon information during the interview and questionnaire completed by the claimant, Ms. Close also contacted the claimant's last employer, Lynch Livestock Inc.

The employer made an offer of recall to work to the claimant on September 13, 2018, during a personal phone call with the claimant. Josh, the Hog Mill Manager, made the call (Department Exhibit B) That offer included the following terms: A full-time position, as a mill feed grinder, earning \$16.50 per hour, beginning September 17, 2018 (Department Exhibit B). No evidence was presented about whether the claimant would be offered overtime or more than 40 hours of work per week. The claimant was informed he would have to take another drug screening and wellness test, as he had done in the past after layoffs. The claimant informed the employer he would think about it but never replied or returned to work.

The claimant's average weekly wage is \$1,066.84. The offer was made in the fourteenth week of unemployment. The claimant's administrative records establish that his base period wages are from first quarter of 2017 through the fourth quarter of 2018. The claimant's high quarter of wages was fourth quarter of 2017, in the amount of \$13,868.96.

Since separation with this employer, the claimant has made weekly job search contacts as required, for full-time work. He has no other restrictions to employability.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In order for an offer of work to be suitable, it must meet the minimum requirements set out above. In this case, the claimant's average weekly wage was \$1,066.84. ($\$13,868.96/13$). Because the offer was extended during the claimant's fourteenth week of unemployment, the offered wages must be 70% of the claimant's average weekly wage, which is \$746.79 per week. The employer here offered the claimant forty hours of work at \$16.50 per hour, so his wages under the offer would be \$660.00 per week.

Based on the evidence presented, the administrative law judge concludes the offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable.

DECISION:

The December 31, 2018, (reference 03) decision is reversed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn