IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

WAYNE M NATHEM
Claimant

APPEAL NO. 10O-UI-09660-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NATHEM ENTERPRISES LTD
IOWA CRATING & PACKAGING**
Employer

**OC: 11-15-09
Claimant: Respondent (1)**

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 25, 2010, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 26, 2010. The claimant did participate. The employer did participate through Wayne W. Nathem, President.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked previously for this employer up until November 2008. The employer who is the claimant's Father, made an offer for the claimant to return to work on February 13, 2010. At the time the employer made the offer, the employer still owed the claimant back wages from work performed in November 2008. The claimant was not obligated to accept an offer of employment from an employer who did not pay his wages in a timely manner. At the time of the hearing the employer still had a check to give to the claimant for his out of pocket expenses. The employer refused to mail the claimant's expense check to him because he thought that the employee, his son, should see him face to face to get his check. An employee is not required to face an employer in order to pick up their paycheck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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. 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(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 § 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.

The employer admitted that he did not pay wages in a timely manner to the employee. The offer was unsuitable as even at the time of the hearing, some six months after the offer of work was made to the claimant, the employer still has not paid the claimant all of the out of pocket expenses that are owed to him. The claimant is not obligated to work for an employer who does not pay wages in a consistent, timely manner, even if the employer is his Father's company. Additionally, the employer cannot choose where the claimant seeks work. It is up to the claimant to choose which other jobs he chooses to apply for, not the ones the employer thinks he should apply for. The offer of work made by this employer was unsuitable and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 25, 2010, reference 02, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs