

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY T SANOW
Claimant

ADVANCE SERVICES INC
Employer

APPEAL 14A-UI-10983-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/20/14
Claimant: Appellant (2)

Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 16, 2014, (reference 04) unemployment insurance decision that denied benefits after concluding that the claimant had refused a suitable offer of work. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2014. Claimant participated. Employer participated through Michael Payne, Manager. Employer's Exhibit One was entered and received into the record.

ISSUES:

Did the claimant refuse a suitable offer of work?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was full time with this employer but assigned to work as a fork lift operator at the Pioneer Facility in Aurelia, Iowa. He began his assignment in 2011 as a field inspector. After working as a field inspector for a period of time he was moved inside the plant because he is a disabled veteran and is just physically not able to perform as a field inspector due to his disabled veteran status. He notified the employer that it was physically impossible for him to continue working as a field inspector. For the next two years he worked inside the plant as a fork truck operator until he was laid off due to lack of work on July 25, 2014.

On August 29 the claimant was called by Sara Swick and offered a return to work at a field inspector position. He told her that he just physically could not perform the physical work required as he now has a disability rating of 90% from the VA. He was offered the position for \$11.25 per hour but had previously been making \$13.25 per hour. Claimant's average weekly wage is \$470.00. The offer was made in the sixth week of unemployment.

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.

The offer was unsuitable, as it did not comply with the claimant's physical needs and disability accommodations. As the employer had been accommodating his physical disability for two years, they were obligated to continue with the same accommodation. Any assignment or offer that did not comply with the claimant's disability rating or issues is unsuitable. Benefits are allowed.

Iowa Code § 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".

The claimant is able to and available for work as is demonstrated by his working the last two years as a fork-lift driver.

DECISION:

The October 16, 2014, reference 04, decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs