

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY L BERHOW
Claimant

HANKINS TRUCKING
Employer

APPEAL 17A-UI-04955-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/16/16
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.5(3)A – Failure to Accept Work

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 21, 2016 (reference 02) unemployment insurance decision that found claimant was eligible to receive unemployment insurance benefits because no offer of work was actually made to him. The parties were properly notified of the hearing. A telephone hearing was held on May 26, 2017. The claimant, Timothy L. Berhow, participated personally. The employer, Hankins Trucking, participated through witness Sharon Hankins. Employer's Exhibits 1 – 2 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked as a truck driver. Spencer Hankins was claimant's dispatcher. Claimant separated from employment in September of 2016.

Claimant filed a claim for unemployment insurance benefits with an effective date of October 16, 2016. On October 22, 2016, Spencer Hankins told claimant that he had a job for him but did not specify what the job entailed, when the job would start, what the hours would be, or what the rate of pay for the job would be. Claimant never heard anything further from Mr. Hankins after October 22, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that no offer of work was actually communicated to claimant.

Iowa Code section 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. (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.

No information regarding the date, time or rate of pay was ever communicated to the claimant about this job. As such, no offer of work was actually made to the claimant. Since no offer of work was actually made, benefits are allowed.

DECISION:

The November 21, 2016 (reference 02) unemployment insurance decision is affirmed. Employer did not communicate an offer of work to claimant. Benefits are allowed, provided claimant is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn