

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID J KILTS**

Claimant

**APPEAL NO: 11A-UI-13156-D**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FINE LINE WOODWORKS INC**

Employer

**OC: 01/23/11**

**Claimant: Appellant (4)**

Section 96.5-3-a – Work Refusal  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

David J. Kilts (claimant) appealed a representative's October 4, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with an offer of work from Fine Line Woodworks, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 7, 2011. The claimant participated in the hearing and was represented by Shane Michael, Attorney at Law. Dave McGrath appeared on the employer's behalf and presented testimony from one other witness, Kathleen McGrath. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant worked for the employer from about February 2008 into January 2011. He worked full time as a cabinet maker/benchman in the employer's custom furniture and millwork operation. The employer discharged the claimant on January 25, 2011.

The employer was working on a special project for a business client in September 2011. On about September 14 the employer realized that it needed assistance to get the project completed in time for the business client's needs, and that there would likely be additional work from the business client after that special project was completed. As a result, on Thursday, September 15 the general manager and vice president, Mr. McGrath, called the claimant. He initially left the claimant a voice mail message indicating that he needed the claimant to call him, that he had some work for the claimant to do the following week. The claimant returned the call to the employer that evening. McGrath explained that he had work for which he needed the

claimant to come in the following Monday, September 19. The wages were not discussed, but the inference was that the wage would be the same wage at which the claimant worked as of January 25. The claimant's hours had previously been somewhat flexible, but McGrath did specify that he needed the claimant to be able to work 8:00 a.m. to 5:00 p.m. The claimant expressed concern that he had childcare issues to take care of, as well as needing to finish a side project he had already started. McGrath responded that it was more important for the claimant to come in and work for his primary employer. The claimant agreed that he would come in on Monday. However, his intention was that he would come in more to discuss the arrangement, rather than to begin working on the project; the employer understood that the claimant was coming in to immediately start working on the project.

On Monday morning September 19, about five minutes before the claimant was to have come in, the claimant called McGrath and indicated he could not come in on that day, that he still had childcare issues and still needed to finish up his side job, and so needed some more time, about a week. McGrath responded that he needed the claimant right away, and since the claimant was not coming when he was needed, that the offer was rescinded. The employer proceeded to find a subcontractor to assist with the immediate special project need, and turned down the additional work the business client would have had coming up in the short term.

#### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the claimant refused a suitable offer of work without good cause.

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.

In order for a refusal disqualification to occur, there must have been a definite offer of suitable work and a definite refusal of that work. 871 IAC 24.24(1)a. While the specific monetary terms were not explicitly discussed, they were sufficiently inferred to establish that there was a specific offer of work being extended, and that offer was suitable as defined by law. However, there was not a definite refusal of any work with the employer; the claimant was merely seeking to delay the start of his return to the employer. After being separated from the employer for nearly six months, it was not unreasonable on the part of the claimant to need more than three calendar days including a Saturday and Sunday to make arrangements to be able to return to work.

871 IAC 24.24(4) provides:

Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. Problems with childcare or other side work which interfere with a claimant's ability to accept work will result in the claimant being found unable or unavailable for work. 871 IAC 24.23(7), (8), (16). However, this type of disqualification is a week-to-week issue. The claimant was not able and available for work and consequently was not eligible to receive unemployment insurance benefits for the benefit week ending September 24, 2011. The employer has not tested the claimant's availability for work for weeks other than that week.

#### **DECISION:**

The representative's October 4, 2011 decision (reference 01) is modified in favor of the claimant. The claimant did not refuse a suitable offer of work without good cause. The claimant was not able to work and available for work for the week ending September 24, 2011, and is not

eligible for benefits for that week. As of September 25, 2011 the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css