

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMUR A YASAT
Claimant

APPEAL NO. 14A-UI-09637-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 08/03/14
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 8, 2014, reference 01, that concluded the claimant was not disqualified for failing to accept work. A telephone hearing was held on October 6, 2014. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Bangone Chanthavong participated in the hearing on behalf of the employer with a witness, Judith Easton. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show administrative law judge Julie Elder issued a decision on September 29, 2014, deciding the claimant was laid off and the claimant's declining the Microsoft X-box training did not amount to a voluntarily quit of employment. Official notice is also made that the claimant was approved for department approved training from August 23 to December 20, 2014, and is currently ineligible for benefits for failing to report to the department as directed. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant worked full time for the employer as a customer support professional assigned to the Microsoft Market account from September 16, 2013, to July 1, 2014. His rate of pay was \$10 per hour. He worked a 1 p.m. to 10 p.m. work shift, Monday to Friday.

The Microsoft Market account closed in July 2014. On the claimant's last day of work on July 1, 2014, a senior recruiter asked the claimant if he wanted to start the paid training class for working on the X-box account starting July 14, which when completed would have qualified the claimant to work as a customer support professional for X-box. The customer support professional position for X-box would have also paid \$10 per hour. The shifts on the X-box

account were between 8 a.m. and midnight, with the exact shift determined at the end of the training. The claimant declined to take the training for the X-box position because he had enrolled in school in the fall. The claimant was called later about another X-box training session on July 28 but could not be reached.

The claimant filed a new claim for unemployment insurance benefits effective August 3, 2014. He was approved for department approved training from August 23 to December 20, 2014. He is currently ineligible for benefits for failing to report to the department as directed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3)

disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The claimant cannot be disqualified for declining to attend the X-box training class. The offer of work was made on July 1, 2014, over a month before the claimant ever filed for unemployment insurance benefits and therefore was not made during the claimant's benefit year. No further bona fide offer of work was made to the claimant. A decision regarding the claimant's work separation has already been made in the administrative law judge's decision on September 29, 2014.

The employer is not chargeable for any benefits paid while the claimant is in approved training. The claimant is currently disqualified due to a determination that he failed to report for reemployment services.

DECISION:

The unemployment insurance decision dated September 8, 2014, reference 01, is affirmed. The claimant is not disqualified for failing to accept work offered before his benefit year began.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs