

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HARLEY N WIEDEMEIER
Claimant

REUTZEL EXCAVATING INC
Employer

APPEAL 20A-UI-02917-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/19/20
Claimant: Respondent (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

On April 8, 2020 Reutzels Excavating Inc. (employer/appellant) filed an appeal from the April 2, 2020 (reference 01) unemployment insurance decision that determined Harley Wiedemeier (claimant/respondent) was eligible for benefits.

After due notice was issued, a telephone conference hearing was held on May 5, 2020. Claimant did not register a number for the hearing and did not participate. Employer participated through Vice President Kim Reutzels and President Del Reutzels.

Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

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 heard the testimony and having reviewed the evidence in the record, the administrative law judge finds:

Claimant had performed seasonal work for employer for seven or eight years. He was laid off each winter and was typically recalled to work in March.

Mr. Reutzels attempted to contact claimant several times via telephone in early and mid-March to recall him to work. However, claimant did not answer or return those calls. Ms. Reutzels then called claimant on March 14, 2020, informing him his health insurance would be cancelled if he did not return to work. Claimant then contacted Mr. Reutzels the following day, March 15. Claimant informed Mr. Reutzels at that time that he would not return to work. Claimant did not give a specific reason but indicated he was "going to try something different" and that he had moved further away from the job location. Had claimant returned to work, he would have been performing the same work as he had prior to his layoff and would have received a pay increase due to his years of experience.

Neither claimant nor employer participated personally in the fact-finding interview on April 1, 2020. Employer faxed in a statement for the interview on March 31, 2020. However, it does not appear this statement was received by the fact-finder prior to a decision being issued.

In the statement, Ms. Reutzel wrote she and Mr. Reutzel were unable to participate personally in the interview due to Mr. Reutzel undergoing a surgical procedure that same day. Ms. Reutzel stated multiple attempts were made to call claimant back to work but claimant would not answer his phone or return messages. He finally did contact them and indicate he had moved further away and was going to pursue other work. Exhibit 1.

Claimant filed a claim for unemployment benefits with an effective date of January 19, 2020. Claimant has received benefits in the amount of \$481.00 for a period of seven weeks from the date of refusal, from the benefit week ending March 21, 2020 and continuing through the benefit week ending May 2, 2020. The total amount of benefits paid during that period is \$3,367.00. Claimant has also received Federal Pandemic Unemployment Compensation (FPUC) benefits in the amount of \$3,200.00 during that timeframe.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the April 2, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED. The administrative law judge finds claimant refused a suitable offer of work on March 15, 2020. He is disqualified from receiving benefits effective that date.

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. (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.

Iowa Admin. Code r. 871-24.24(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.

Iowa Admin. Code r. 871-24.24(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 section 96.5(3)"b" are controlling in the determination of suitability of work.

Employer offered claimant suitable work. The work would have been the same as claimant had previously performed and would have been above 100 percent of what he was previously earning. The refusal occurred within the individual's benefit year. Claimant is therefore disqualified from receiving benefits from the date of refusal, March 15, 2020.

DECISION:

The April 2, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is REVERSED. The administrative law judge finds claimant refused a suitable offer of work on March 15, 2020. He is disqualified from receiving benefits effective that date. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The issue of whether claimant has been overpaid regular unemployment benefits and/or FPUC benefits is remanded to the Benefits Bureau for an investigation and decision.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 8, 2020
Decision Dated and Mailed

abd/scn

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.