

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON D HANSEN
Claimant

BWC TERMINAL HOLDINGS LLC
Employer

APPEAL 23A-UI-10952-S2-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 06/18/23
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 13, 2023 (reference 05) unemployment insurance decision that found claimant was eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was scheduled for December 12, 2023. At the time of the hearing, the Appeals Bureau phone system encountered technological issues. As a result, the hearing was postponed. The parties were properly notified of the new hearing date. A telephone hearing was held on December 27, 2023. The claimant, Jason Hansen, participated personally. The employer, BWC Terminal Holdings, LLC, participated through human resources director Delma Flores and director of operations Joachim Fernandez. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

This amendment is issued to correct the effective date of the denial of benefits. The correct benefits denial date should be October 1, 2023.

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 filed his original claim for benefits effective June 18, 2023. Claimant's weekly wage during the high quarter of the base period is \$2,172.15.

Employer made an offer of work to claimant on October 3, 2023, via telephone. The offer was for a full-time position as a terminal manager at BWC Terminal Holdings, LLC working at least 50 hours per week at a salary of \$110,000 per year with a start date as soon as possible. The position paid the prevailing wage for the type of work involved, and the wages and hours were similar or more favorable than those prevailing for similar work in the area. The offer was made during claimant's fourteenth week of unemployment. Claimant declined the offer because the position would require him to work more than 40 hours per week. Claimant was aware after

interviewing with employer that the hours would be greater than 40 hours per week. Claimant did not want to be away from his family that many hours. Claimant accepted a position in human resources working 40 hours per week on October 19, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Iowa Code section 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 96.1A, subsection 38, paragraph "b", subparagraph (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".

Iowa Code section 96.5(3) provides, in pertinent part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 week of unemployment.

(b) Ninety percent, if the work is offered during the second through the third week of unemployment.

(c) Eighty percent, if the work is offered during the fourth through the fifth week of unemployment.

(d) Seventy percent, if the work is offered during the sixth through the eighth week of unemployment.

(e) Sixty percent, if the work is offered after the eighth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

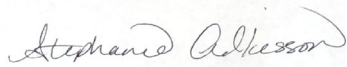
A two-step analysis is used to determine whether a claimant has refused a suitable offer of work. First, the offer must be for suitable work. If suitability is established, then, claimant must have a good cause reason for refusal. See Iowa Admin. Code r. 871-24.24(3).

To be considered suitable, an offer of work must meet minimum wage requirements set out above. Because the offer was made during claimant's fourteenth week of unemployment, the offer must meet or exceed 60% of claimant's average weekly wage to be considered suitable.

Claimant's average weekly wage during the highest quarter of his base period is \$2,172.15. Sixty percent of the average weekly wage is \$1,303.29. Employer's offer was for 50 hours per week at an annual wage of \$110,000.00, which far exceeds sixty percent of the average weekly wage during claimant's highest quarter. The offer exceeds the minimum wage requirement, making it suitable. While claimant's decision to work fewer hours in a different field to spend time with his family is understandable, it is not good cause for refusing to accept a suitable offer of work. Benefits are denied beginning the benefit week of October 1, 2023, and continuing until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the October 1, 2023, disqualification date, and provided he is otherwise eligible.

DECISION:

The November 13, 2023, (reference 05) unemployment insurance decision is reversed. Claimant failed to accept a suitable offer of work. Benefits are denied effective October 1, 2023, and continuing 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.



Stephanie Adkisson
Administrative Law Judge

January 4, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.