

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY W POWELL
Claimant

APPEAL NO. 12A-UI-06089-VST

DIERCKS LTD
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/11
Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 14, 2012, reference 05, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 19, 2012. The employer participated by Kelly Diercks, office manager. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Kelly Diercks. Official notice is taken of agency records.

ISSUE:

Whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer does construction work. The claimant was hired as a laborer on October 11, 2011. The employer's work is seasonal and the claimant was laid off in December 2011. The employer attempted to call the claimant back to work on March 21, 2012. The claimant's girlfriend answered the phone and the phone then disconnected. Other attempts to reach the claimant by telephone were unsuccessful.

The original claim date for this claim is December 4, 2011. The employer is not a base period employer. No benefits have been charged to the employer.

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. The following legal principles must be considered.

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....

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.

The unemployment insurance rules require a personal offer of work to an actual job opening and a definite refusal of the offer before a claimant can be found to have refused an offer of suitable work. 871 IAC 24.24(1).

In this case, the evidence established that the claimant was never given a personal offer of work. The employer attempted to communicate by telephone with the claimant. The claimant never responded and therefore there was no definite offer and no definite refusal. The claimant therefore cannot be disqualified for refusing an offer of suitable work on March 21, 2012.

There was evidence from the employer that a certified letter was sent to the claimant on May 23, 2012, with an offer of work. This decision does not determine whether that was a suitable offer of work that was refused. The only work refusal considered in this decision is for March 21, 2012.

DECISION:

The decision of the representative dated May 14, 2012, reference 05, is affirmed. The claimant did not refuse an offer of suitable work on March 21, 2012. Benefits are allowed if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs