

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL P ASHBY**  
Claimant

**APPEAL NO. 16A-UI-09166-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAIN STREET DONUTS LLC**  
Employer

**OC: 07/31/16**  
**Claimant: Respondent (1/R)**

Iowa Code section 96.5(3) – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 11, 2016, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible, based on an agency conclusion that the purported work refusal predated the claimant's claim for unemployment insurance benefits. After due notice was issued, a hearing was held on September 9, 2016. Sam Ward represented the employer and presented additional testimony through Jessica Frueh Garcia. At the time set for the hearing, claimant Paul Ashby was not available at the telephone number he provided for the hearing and did not participate. Exhibit One was received into evidence.

Mr. Ashby contacted the administrative law judge after the hearing record had closed and the employer had been dismissed from the hearing. Mr. Ashby did not provide good cause to reopen the hearing on the work refusal issue.

**ISSUES:**

Whether Mr. Ashby is disqualified for benefits based on a purported work refusal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Paul Ashby was employed by Main Street Donuts, L.L.C., as a part-time donut fryer and last performed work for the employer on July 23, 2016. It was on or about that date that the employer asserts Mr. Ashby refused work. Mr. Ashby established a claim for unemployment insurance benefits that was effective July 31, 2016.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(3) provides that an unemployment insurance claimant who refused an offer of suitable work without good cause is disqualified for unemployment insurance benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. The claimant must then meet all other eligibility requirements. In order for the work refusal disqualification to apply, both the purported offer and the purported refusal must occur when the

claimant has a claim unemployment insurance benefits in place. See Iowa Administrative Code rule 871-24.24(8). In this case, the purported work refusal occurred on or about July 23, 2016, but the claim for unemployment insurance benefits was not established until the week that started July 31, 2016. Accordingly, the work refusal disqualification set forth at Iowa Code section 96.5(3) does not apply. The claimant remains eligible for benefits, so long as he meets all other eligibility requirements.

The underlying facts are really about a separation from employment, governed by Iowa Code section 96.5(1) or 96.5(2), not a work refusal under Iowa Code section 96.5(3). Accordingly, this matter will be remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits, based on the separation from the employment.

**DECISION:**

The August 11, 2016, reference 02, is affirmed. The purported offer and purported refusal predated the unemployment insurance claim. Accordingly, the purported offer and purported refusal of work do not disqualify the claimant for benefits under Iowa Code section 96.5(3). The claimant is eligible for benefits, so long as he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits, based on the separation from the employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs