

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DENIS GUILAVOGUI
1122 – 43RD ST
MOLINE IL 61265

WEST LIBERTY FOODS LLC
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WEST LIBERTY IA 52776

Appeal Number: 04A-UI-11255-H2T
OC: 09-26-04 R: 12
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 11, 2004, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on November 16, 2004. The claimant did participate through the interpretation of Frederic Etcheverry. The employer did participate through Jamie Ruess, Human Resources Representative, and Mindy Heick, Human Resources Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time beginning on November 10, 2003 until May 3, 2004. The claimant was laid off on March 7, 2004. During the entire time the claimant worked for the

employer he always worked the 3rd shift as he had a child to care for during the day. The claimant was offered return to work on May 3, 2004 but only for the 1st shift. The claimant called the human resources department and told someone who answered the phone that he needed to work 3rd shift. The claimant was never offered work on the 1st shift. Agency records indicate that at the time the offer of work was made to the claimant he did not have a current claim for benefits on file. The offer of work was not made during the claimant's current benefit year. The claimant's current claim for benefits was made effective September 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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. 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. 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.

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

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.

The claimant was not offered suitable work as he had always previously worked only the first shift. To offer the claimant the 1st shift when he had only previously worked the 3rd shift makes the offer unsuitable. Additionally, the offer of work was made to the claimant when he did not have a current claim for benefits pending. Thus, it is determined the claimant did not refuse a suitable offer of work.

DECISION:

The October 11, 2004, reference 04, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc