

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHRISTOPHER W MILLAGE**  
Claimant

**APPEAL 17A-UI-11537-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DICKERSON MECHANICAL INC**  
Employer

**OC: 10/01/17  
Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 26, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 6, 2017. The claimant did not participate. The employer participated through President Kathryn Dickerson and Vice President George Dickerson. Official notice was taken of claimant's wage 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 reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a laborer from November 4, 2015, until this employment ended on September 29, 2017, when he was laid off due to lack of work. At the time claimant was laid off he was told by George Dickerson that he was a good worker and would be called if work became available, but that he should seek other employment. Shortly after claimant was laid off, business picked up again. On October 15, 2017, George Dickerson called claimant and offered him his job back. Dickerson told claimant he could start the next day and would have the same position, hours, and pay as he did when he left employment. At the time of his separation claimant's hourly pay was \$15.00 and he was guaranteed the at least 40 hours per week, with the possibility of overtime. Claimant indicated he would have to sleep on it, but ultimately never responded to the offer. Claimant's average weekly wage is \$802.89. This employer is claimant's only base-period employer. The employer noted claimant's prior wage records likely included overtime pay.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant refused an offer of work on October 15, 2017 and this offer was suitable.

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.

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

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal

was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

Iowa Admin. Code r. 871-24.24(14)(a) 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.

The employer offered to recall claimant to this position two weeks after he was separated from employment, due to what was believed at the time to be a permanent layoff. The employer offered to return claimant to work under the same conditions he had been working. While claimant's average weekly wage may have appeared higher than his hourly wage with the employer, this information is misleading, as it refers to an anomaly attributable to overtime hours. The employer offered claimant the same position, hours, and wages and he had previously been working. The offer was suitable and claimant did not have a good cause reason for the failure to accept it.

**DECISION:**

The October 26, 2017, (reference 01) unemployment insurance decision is reversed. Claimant failed to accept a suitable offer of work. Benefits are withheld effective October 15, 2017 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 the claimant was overpaid benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs