

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN VAN OORT
Claimant

APPEAL NO. 15A-UI-10470-S1T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOONSTRA FARMS INC
Employer

OC: 05/03/15
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Boonstra Farms (employer) appealed a representative's September 11, 2015, decision (reference 05) that concluded Steven Van Oort (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 1, 2015. The claimant participated personally. The employer participated by Matthew Boonstra, Owner. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in November 2013, as a laborer. In August 2014, the employer and claimant agreed that the claimant should work as an egg packer only. The claimant had health issues when he worked in the barn. The employer found the claimant worked slowly when he worked in the barn. On April 30, 2015, the claimant was separated from work due to the onset of avian influenza.

Clean up of the barn required special bio hazardous clothing and equipment. On July 23, 2015, the employer sent a text message to the claimant asking him to come back to work. The employer described the work as general cleaning in the barn getting ready for the birds. The claimant refused the work because he did not know anything about cleaning a hazardous area and did not work in the barn. His previous job had been packing eggs. The employer did not tell the claimant the date the job would start, the hourly rate of pay, or that the site was not considered a hazardous area any more.

On August 16, 2015, the employer sent a text message to the claimant asking him to return to work. The employer said the birds were back and laying but the claimant would be required to work in the barn and pack eggs. The claimant refused the work because he had medical issues when he worked in the barn.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant refused an offer of suitable work. For the following reasons the administrative law judge concludes he did not.

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 § 96.5(3)"b" are controlling in the determination of suitability of work.

Iowa Admin. Code r. 871-24.24(15) provides:

In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a. Any risk to the health, safety and morals of the individual.
- b. The individual's physical fitness.
- c. Prior training.
- d. Length of unemployment.
- e. Prospects for securing local work by the individual.
- f. The individual's customary occupation.
- g. Distance from the available work.

The employer offered work in a barn where the employer knew the claimant had medical issues. The work that was offered was not reasonably suitable and comparable to the job the claimant previously held. The claimant had headaches and sinus issues when he worked in the barn. In addition, the claimant was under the reasonable belief that he would be cleaning a hazardous site. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The representative's September 11, 2015, decision (reference 05) is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css