

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SOMNATH ALTENA**  
Claimant

**APPEAL 17A-UI-04842-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NIBBELINK LAWN SERVICE**  
Employer

**OC: 04/16/17**  
**Claimant: Respondent (1-R)**

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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 May 2, 2017, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2017. Claimant did not participate. Claimant sent the Appeals Bureau a notice that was postmarked May 15, 2017 that stated: “I do not wish to Appeal!” (emphasis in original). Employer participated through owner Kevin Nibbelink. Official notice was taken of the administrative record, including claimant’s benefit payment history, with no objection.

**ISSUE:**

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired by the employer in 2015 in a part-time seasonal position of general maintenance. Claimant started the 2016 season around April 2016. On July 1, 2016, claimant did not report to work. The employer has not heard anything from claimant after he did not show up for work on July 1, 2016. The employer did not make a new offer of work for claimant on July 1, 2016; he just stopped reporting to work. Claimant was being paid \$11.00 per hour and averaged 25 to 30 hours per week, but he was not guaranteed a set number of hours. Claimant filed a claim for benefits with an effective date of April 16, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes no offer or refusal of work occurred when claimant had a valid claim for benefits.

Iowa Code § 96.5(3) 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(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 employer did not make an offer of work to claimant on July 1, 2016, he just stopped showing up for work at the job he had with the employer. Claimant filed a claim for benefits with an effective date of April 16, 2017. The administrative law judge does not have jurisdiction to evaluate an offer or refusal of work since the offer of employment or refusal of work took place outside of the benefit year. Benefits are allowed.

**DECISION:**

The May 2, 2017, (reference 02) unemployment insurance decision is affirmed. No offer or refusal of work occurred during the benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of any offer or refusal. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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