

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB H POTTER
Claimant

APPEAL NO: 13A-UI-08359-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GODBERSEN-SMITH CONST CO
Employer

OC: 10/14/12

Claimant: Respondent (1/R)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Godbersen-Smith Construction Company (employer) appealed a representative's July 15, 2013 decision (reference 03) that concluded Jacob H. Potter (claimant) was qualified to receive unemployment insurance benefits in connection with an offer of recall to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Karen Gunderson appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The claimant started working for the employer on July 5, 2011. He worked full time as a laborer. He was laid off on October 13, 2012. He was aware that the employer anticipated recalling him to work in the spring of 2013.

On March 19 the employer sent the claimant a letter by regular mail informing him of a mandatory meeting scheduled for April 1 in preparation for returning to work. The claimant did not report for that meeting. The claimant's father also worked for the employer. Someone for the employer called one of them on April 2 and was told that neither of them would be returning to work because they had found work closer to home in Missouri; however, the employer could not verify that someone for the employer had actually spoken directly to the claimant or that the claimant had personally received the March 19 letter.

REASONING AND CONCLUSIONS OF LAW:

The stated issue in this case is whether the claimant refused a suitable offer of work or recall to work. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if he has failed without good cause to accept suitable work or a recall to work when offered. However, applying this statute, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant.

871 IAC 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.

In this case, the employer cannot establish that there was a bona fide offer of work communicated to the claimant and no definite refusal of work specifically by the claimant after the layoff from employment. Benefits are allowed, if the claimant is otherwise eligible.

An issue has arisen as to whether the claimant might be earning wages in another state after April 1, 2013 which he has failed to report on his Iowa claim. The case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's July 15, 2013 decision (reference 03) is affirmed. The claimant did not refuse a bona fide offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the unreported wage issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs