

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

RICHARD L FEES
335 NW 60TH AVE
DES MOINES IA 50313

CHURCHES UNITED INC
205 15TH ST
DES MOINES IA 50309

Appeal Number: 05A-UI-01112-AT
OC: 01/02/05 R: 02
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 96.5-3a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Churches United, Inc. filed a timely appeal from an unemployment insurance decision dated January 27, 2005, reference 01, which allowed benefits to Richard L. Fees. After due notice was issued, a telephone hearing was held on February 16, 2005 with Mr. Fees participating. Executive Director Jean Brown participated for the employer. This matter is considered on a consolidated record with 05A-UI-01113-AT.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Richard L. Fees was employed by Churches United, Inc. from March 14, 2002 until he resigned January 3, 2005. He last worked full time as outreach coordinator for the veterans program earning \$12.24 per hour for 40 hours of work per week. On or about December 30, 2004 Executive Director Jean Brown told Mr. Fees that he would be transferred from this position but that he could remain employed by the company as a shelter assistant earning \$8.68 per hour. Mr. Fees was given until January 3, 2005 to decide if he wished to stay. Mr. Fees elected to resign because of the reduction in wages. He turned in his keys on January 3, 2005. Churches United has not made an offer of employment since that date.

REASONING AND CONCLUSIONS OF LAW:

The general issue is whether the events set forth in the Findings of Fact disqualify Mr. Fees for unemployment insurance benefits. They do not.

Iowa Code Section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

An individual who resigns because of a substantial change in the conditions of employment does so with good cause attributable to the employer. See 871 IAC 24.26(1). In determining whether a substantial change has occurred, the administrative law judge may consider only the impact on the claimant. The employer's motivation in making the change is not relevant. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). The evidence in this record establishes that the employer proposed to reduce Mr. Fees' wages by 29.9 percent. The administrative law judge concludes that this is a substantial reduction in pay. No disqualification may be imposed.

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.

The administrative law judge concludes that no disqualification may be imposed under Iowa Code section 96.5-3-a for several reasons. First, the evidence establishes that this was not a true offer of employment but merely a proposed change in an existing employment relationship. As such, the proper analysis is under Iowa Code section 96.5-1 rather than this section of the law. Second, even if this was considered a bona fide offer of employment, the week's wage offered by the employer would have been \$347.20. Mr. Fees' average weekly wage in the highest quarter of his base period was \$546.97. The wage offered by the employer was less than 65 percent of this average weekly wage. Thus, by statutory definition, the offer would never be deemed suitable. Finally, the discussions of a new position occurred on December 30, 2004, a date which fell before Mr. Fees filed his original claim for benefits. Both an offer and a refusal must occur during an individual's benefit year if the agency is to have jurisdiction to determine the consequences of the refusal. See 871 IAC 24.24(8).

DECISION:

The unemployment insurance decision dated January 27, 2005, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/kjf