

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RODNEY L RILEY**  
Claimant

**NSK CORPORATION**  
Employer

**APPEAL 18A-UI-04116-H2T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/07/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code §96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 22, 2018, (reference 06) unemployment insurance decision that denied benefits effective February 25, 2018 finding the claimant had failed to accept a suitable offer of work. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2018. Claimant participated. Employer did not participate.

**ISSUES:**

Did the claimant file a timely appeal?

Did the claimant refuse a suitable offer of work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant received the decision in the last week of March. When he went to the post office in Essex to file his appeal on April 2, he discovered the post office was closed so the floors could be refinished. He did not realize he could file his appeal online until the next day April 3 when he filed the appeal. His appeal was delayed due to the post office being unexpectedly closed on a business day.

Around February 20, 2018 NSK Corporation offered the claimant a job that would not require he use is right hand in a constant repetitive manner. Claimant accepted the job, went through the company physical and was given a start date. He was to begin the job during the last week of February 2018.

Prior to starting the job the claimant was contacted by the employer and told that he would not be given the position he had interviewed for, but instead would be going to perform a grinding job that would require almost constant repetitive use of his right hand. The claimant refused the job as the job duties and physical requirements were different than the one he had initially applied for.

## **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did not have an opportunity to timely appeal the fact-finder's decision because the post office was unexpectedly closed on April 2, when claimant went to file his appeal. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to the fact that the United States Postal Service office was closed on April 2, 2018. (See 871 IAC 24.35(2)). Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Employer made an offer of work to claimant that would not require he use is right hand in a constant repetitive manner. The claimant was offered and accepted the job based upon the employer's representation about how much he would have to use his right hand. Claimant passed the company physical. Thereafter the employer changed the job the claimant would be doing to one that would include almost constant repetitive use of his right hand. The claimant refused the job as the employer changed the job duties and physical requirement of the job the claimant had previously been offered and accepted. The second job offered was unsuitable as it was significantly different physical requirement of the job. Under these circumstances the claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible. .

**DECISION:**

The March 22, 2018, (reference 06), decision is reversed. The claimant did file a timely appeal. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs