

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY OLSON

Claimant

APPEAL NO: 09A-UI-14759-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP

Employer

OC: 08-16-09

Claimant: Respondent (1R)

Section 96.5(3)a – Work Refusal

871 IAC 24.24(8) – No Valid Unemployment Insurance Claim

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 15, 2009, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 29, 2009. The claimant participated in the hearing. The employer participated in the hearing. The parties agreed to waive notice on the work refusal issue. The timeliness issue was moot as the appeal was due September 25, 2009 and received September 25, 2009.

ISSUE:

The issue is whether the claimant refused an offer of suitable work and, if so, whether the refusal was with good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant refused an offer of work from the employer July 25, 2009. The claimant filed a claim for job insurance benefits effective August 16, 2009.

There has been a separation from this employer. The issue of the claimant's separation from Per Mar has not yet been adjudicated by the Claims Section.

REASONING AND CONCLUSIONS OF LAW:

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

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.

871 IAC 24.28(8) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(8) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by the appeal board and such decision has become final.

An individual who refuses an offer of suitable work without good cause is disqualified from receiving job insurance benefits, Iowa Code section 96.5(3)a. However, Workforce Development has no jurisdiction over work refusals that occur prior to the filing of a claim for job insurance benefits. 871 IAC 24.24(8). The claimant refused work with Per Mar July 25, 2009. He did not have an old claim in effect at the time and did not file his current claim until August 16, 2009. Inasmuch as he did not have a valid claim for benefits in effect at the time of the refusal, he cannot be disqualified from receiving benefits because of the refusal.

DECISION:

The September 15, 2009, reference 01, decision is affirmed. The claimant did refuse an offer of work made outside of her benefit year, thus, the administrative law judge has no jurisdiction to determine the suitability of the offer. Benefits are allowed, provided the claimant is otherwise eligible. The issue of the claimant's separation from Per Mar is remanded to the Claims Section for an initial determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css