

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER HOWE**  
Claimant

**APPEAL NO. 15A-UI-11713-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST BASEMENT SYSTEMS INC**  
Employer

**OC: 06/14/15**  
**Claimant: Respondent (1)**

Section 96.4-3-a – Able and Available for Work  
Section 96.5-3-a – Suitable Work Offer

**STATEMENT OF THE CASE:**

Midwest Basement Systems, Inc. filed a timely appeal from a representative's decision dated October 19, 2015, reference 03, which held claimant eligible to receive unemployment insurance benefits finding that the claimant had refused an offer of work with Midwest Basement Systems on August 10, 2015 with good cause. After due notice, a telephone hearing was held on November 4, 2015. Although notified the claimant did not participate. The employer participated by Mr. Johnathan Bishop, Financial Controller/Human Resource Manager. Exhibits A, B, and C were received into the record.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Tyler Howe began employment with Midwest Basement Systems, Inc. on March 15, 2010 and was paid by the hour with regular incentive bonuses. Claimant's employment with Midwest Basement Systems, Inc. came to an end on June 19, 2015 when Mr. Howe was discharged from his employment. It was employer's belief that he had violated company safety policies. Mr. Howe opened a claim for unemployment insurance benefits and received benefits without disqualification and his separation from employment was determined to be non disqualifying. The claimant was allowed unemployment insurance benefits.

On August 10, 2015, Midwest Basement Systems, Inc. sent the claimant a certified letter to his address of record offering the claimant the position of manufacturing fabricator specifying that the claimant would be paid at a rate of \$15.98 per hour plus annual bonuses and offering the same or similar benefits that he had received while previously employed by the company. Mr. Howe received the certified letter but did not respond to it.

It is the employer's position that although the hourly rate offered to Mr. Howe on August 10, 2015 was somewhat less than his average weekly wage during his highest base period quarter, it is the employer's belief that the hourly wage offered plus overtime that might be assigned and annual bonuses could equate to 75% of the amount Mr. Howe was earning during his highest quarter within his base period of employment. The claimant did not accept nor respond to the job offer made by the company who had discharged the claimant approximately two months previously.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Code § 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.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

In the case at hand, the evidence in the record establishes that Mr. Howe was previously discharged from his employment with Midwest Basement Systems, Inc. for what the employer considered to be misconduct in connection with his employment. At the time of discharge the claimant was not offered any alternative job position with the company. Subsequently, Mr. Howe filed a claim for unemployment insurance benefits and began claiming benefits. It was determined that although the employer had discharged Mr. Howe from their employment, the reason for the claimant's discharge was not sufficient to warrant the denial of unemployment insurance benefits.

On August 10, 2015, the employer offered Mr. Howe new work in a different job capacity working on the production side of the company's business as a fabricator instead of the position as a crew foreman in the field. The offer included pay per hour that was less than the claimant had received at the time of his discharge, but was at a level that the employer believed would equal 75% of Mr. Howe's highest wages in his highest quarter during his base period of employment, if potential overtime and annual bonuses were paid to the claimant based upon the employer's speculation that the overtime and bonuses would take place in the future. The third

factor to be considered in determining whether Mr. Howe had good cause to refuse the offer of work, is the fact that Mr. Howe had been discharged from the company less than two months before and now was being recalled back by his previous employer.

Iowa Administrative Code 871 IAC 24.24(14)(b) provides that employment offers shall not be considered suitable if the claimant had previously quit the former employer and the conditions that caused the claimant to quit were still in existence. The administrative law judge concludes that that principle equally applies in this case. The employer had previously elected to discharge Mr. Howe for no disqualifying reason. The employment offer is not considered suitable in this case because the claimant was being offered work by the same employer that recently discharged him, because the work offered was substantially different than that the claimant had previously performed for this employer and because the issue of whether the claimant would be paid at the percentage amount specified in Iowa Code section 96.5(3) is speculative, based upon projections by the employer that the claimant might receive pay for overtime and bonuses that would equal 75% of Mr. Howe's pay in the highest quarter of his base period of employment.

Although the administrative law judge is cognizant that the company wished to re-employ this claimant and be relieved of charges for unemployment insurance benefits being paid to the claimant, for the above-stated reasons the administrative law judge concludes that the claimant had good cause to refuse the offer of work as it was not suitable.

**DECISION:**

The representative's decision dated October 19, 2015, reference 03, is affirmed. Claimant did not accept an offer of work on August 10, 2015 because the offer was not suitable. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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