

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LONNIE D POWESHIEK
Claimant

MODERN BUILDERS INC
Employer

APPEAL 19A-UI-06564-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/14/19
Claimant: Respondent (5-R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On August 16, 2019, Modern Builders, Inc. (employer) filed an appeal from the August 8, 2019, reference 01, unemployment insurance decision that allowed benefits based on the determination the offer made to Lonnie D. Poweshiek (claimant) was not a suitable offer of work. After due notice was issued, a telephone conference hearing was held on September 12, 2019. The claimant participated personally. The employer participated through Vice President Rusty Stensland. The Employer's Exhibit 1 was admitted without objection. The administrative law judge took official notice of the administrative record, specifically the fact-finding documents and the claimant's wage history.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was rehired to work for the employer as a Laborer on October 29, 2018 on a prevailing wage job. The job paid \$23.70 per hour plus an additional \$11.65 an hour for fringe costs. On or about July 11, 2019, the employer had to temporarily stop working on the job.

On or about July 12, the employer offered the claimant the opportunity to work at another job site earning \$18.00 an hour. There were no additional funds to cover the expense of a two-and-a-half-hour commute or lodging in the local area. The claimant declined the offer and said he would wait for the work on the prevailing wage job to resume.

The claimant filed his claim for benefits effective July 14, 2019, and his average weekly wage is \$1,169.00. The claimant opened his claim stating he was laid off due to a lack of work. The administrative record shows his group code is currently "3," meaning he was temporarily laid off and not required to search for work.

On July 17, the employer determined the claimant had separated from employment. Whether the claimant's separation qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was made outside of the claim year and the administrative law judge does not have jurisdiction to determine whether it was a suitable offer. Benefits are allowed, provided the claimant is otherwise eligible.

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. (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.

Iowa Admin. Code r. 871-24.24(8) provides:

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

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

After July 11, the claimant was unable to return to the job site where he had been working. The employer made an offer of a new job assignment prior to July 14, the week the claimant filed his claim for unemployment insurance benefits. The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed, provided the claimant is otherwise eligible.

According to the employer, the claimant's employment ended on July 17, 2019. Whether the claimant's separation qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision including both parties and providing appeal rights. Additionally, as the claimant has been separated from employment, his group code may need to be changed.

DECISION:

The August 8, 2019, reference 01, decision is modified with no change in effect. The offer of work made outside of the claimant's benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

Whether the claimant's separation qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision including both parties and providing appeal rights. Additionally, as the claimant has been separated from employment, his group code may need to be changed.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn