

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R MORRIS

Claimant

APPEAL NO. 09A-UI-07266-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURRY'S BACKHOE SERVICE INC

Employer

OC: 03/22/09

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 8, 2009, reference 01, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on June 3, 2009. Claimant participated personally and was represented by Toby Gordon, Attorney at law. Employer participated by Jason Curry, Owner; Kelvin Keller, Safety Manager and Mike Dotson, Operations Manager. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant refused to accept a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer on February 6, 2009 as a local driver. Claimant went on medical layoff. Claimant was released to return to work March 17, 2009. Employer made an offer of work to the claimant on April 3, 2009. That offer included the following terms: Full time work as an over the road driver with overnight stays. Claimant's average weekly wage is \$920.00. The offer was made in the second week of unemployment. Claimant refused the offer of work because he did not want to work as an over the road driver with overnight stays. Claimant was hired on as a driver but never worked the over the road job on a regular basis. Claimant would occasionally fill in for an over the road position. Claimant refused the offer of work as an over the road position because it was not a comparable job as to what he had been working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work. The job offered was significantly different from what claimant had been working. This is not a suitable offer of work because the job was so very different from what claimant had been performing. This is a significant change in the contract of hire. Occasionally working over the road does not make claimant an over the road driver. Claimant is only

obligated to accept work for which he is qualified and has previously performed. The over the road driver job is not suitable because it is significantly different from what claimant had been doing. Benefits allowed.

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 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by

personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(8) provides:

(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.

DECISION:

The decision of the representative dated May 8, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs