

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER W PERRY
Claimant

APPEAL NO: 15A-UI-00044-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 07/06/14

Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Roger W. Perry (claimant) appealed a representative's December 22, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with employment with Centro, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-00045-DT. The claimant participated in the hearing. Tracy Lennon appeared on the employer's behalf and presented testimony from one other witness, Terry Waychost. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of recall to suitable work?

FINDINGS OF FACT:

The claimant started working for the employer on May 14, 2012. He worked full time as an assistant machine operator. His last day of work was August 22, 2014.

The machine the claimant had primarily been working on was taken out of service in the spring of 2014. From that time he was shuffled between different shifts and different machines. On August 22 he was informed that there would not be work for him at least the following week and that he was laid off. He was asked to provide his phone number and address on a card for future contact, and he did so. He believed he was laid off until further notice.

The employer asserted that the claimant knew or should have known that he was to return to work on September 1. However, the employer did not give the claimant anything in writing to that effect. The claimant did not return to work on September 1 or thereafter. The employer may have attempted to contact the claimant on and after September 1, but the employer did not successfully actually reach the claimant and advise him that he was needed to return to work. The claimant did not receive any actual communications from the employer. On September 4 the employer determined that the claimant had voluntarily quit by job abandonment and sent a

letter by regular mail to that effect. However, between August 23 and September 4 the claimant had moved to another community. He had arranged with the postal service to have his mail forwarded, but he did not receive the employer's September 4 letter. He believed that his layoff had become permanent and that the employer simply had not needed him any further.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of recall to work, and if so if it was for good cause.

There had been an at least temporary separation from employment between the claimant and the employer on August 22, 2014 when he was informed that he would be at least temporarily laid off for lack of work.¹ While the claimant may not have returned from his layoff, his not returning does not create a new separation that could be a ground for disqualification, but, if the claimant actually declined to return to work after being recalled to work from the layoff, it could result in a disqualification due to a refusal of recall to work.

Iowa Code § 96.5-3-a provides in pertinent part:

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. ... 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.

Rule 871 IAC 24.24(1) provides:

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.

[Emphasis added.]

¹ Rule 871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The employer made no personal contact to the claimant on or after September 1 to advise him that there was work to which he was to return. There was no bona fide communication of a recall to work, and no definite refusal on the part of the claimant. He is not disqualified due to his failure to return to work on or after September 1.

DECISION:

The representative's December 22, 2014 decision (reference 01) is reversed. The claimant did not refuse an offer of recall to work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs