

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RORY J SCHMITT
Claimant

HOME TOWN RESTYLING INC
Employer

APPEAL 15A-UI-05670-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/12/15
Claimant: Appellant (2-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:

The claimant filed an appeal from the May 6, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a refusal to accept suitable work with Home Town Restyling Inc. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2015. The claimant participated. The employer participated through Kevin Schultz. Tim Hale also testified for the employer. The administrative law judge also took official notice of Iowa Workforce Development unemployment insurance records for the claimant.

ISSUE:

Did claimant fail to accept a suitable offer of work and if so, 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 employed as a siding applicator from May 2014 until September 2, 2014 when separation occurred. The claimant and his manager had a phone conversation after his last day worked about a future job for the claimant to work on. The employer was unable to recall when the offer was communicated to the claimant. No details about the work start date, or established commission based pay rate, or location were communicated to the claimant, or at the time of the hearing.

The claimant has no restrictions on his ability and availability to accept or perform work.

The claimant has since been permanently separated from employment. That separation has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work, and no offer of work was actually communicated to the claimant and therefore, the claimant did not refuse a suitable offer of work.

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(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.

The employer testified it made a suitable offer of work to the claimant, which he refused. Neither at the time of the alleged offer, nor at the hearing, could the employer provide any specific details about the offer of work, such as when the offer was made, the date work was to started, the expected rate of pay under a commission structure, where the job offer was located. In the absence of any details about the offer, the administrative law judge is unable to determine a suitable work offer was made. Based on the evidence presented, the employer has failed to establish a suitable offer of work was offered to the claimant, and which he refused. Since no offer of work was actually made, benefits are allowed.

The claimant has no restrictions on his ability and availability to accept or perform work and is therefore eligible for benefits.

REMAND:

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 6, 2015, (reference 01) decision is reversed. The employer did not communicate a suitable offer of work to the claimant. Benefits are allowed, provided the claimant is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/mak