

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDON T HOUSER
Claimant

APPEAL NO. 22A-UI-05874-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TED LARE DESIGN BUILD INC
Employer

**OC: 12/12/21
Claimant: Respondent (1)**

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

On March 4, 2022, the employer filed a timely appeal from the February 25, 2022 (reference 01) decision that allowed benefits to the claimant in connection with the December 12, 2021 original claim, provided the claimant was otherwise eligible for benefits, based on the deputy's conclusion that Ted Lare Design Build, Inc. did not make an offer of work on or about December 12, 2021. After due notice was issued, a hearing was held on April 15, 2022. Claimant, Brandon Houser, participated. Aaron Aswegan represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, KCCO, WAGE-A, NMRO and the reference 03 requalification decision.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause on or about December 12, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Brandon Houser, was employed by Ted Lare Design Build, Inc. as a full-time landscaping crew member until April 8, 2021. Immediately thereafter, the claimant commenced new employment with City of Des Moines and continued in the new employment for several months. Subsequent to the April 8, 2021 separation from Ted Lare Design Build, Inc., that employer has never contacted the claimant to offer new employment and the claimant has not refused any offer of new employment.

The claimant established a new benefit year that was effective December 12, 2021. In connection with that new benefit year, Iowa Workforce Development issued a reference 03 decision that acknowledged the claimant had earned and been paid wages equal to 10 times his weekly benefit amount subsequent to his separation from Ted Lare Design Build, Inc. and prior to establishing the new benefit year. The reference 03 decision allowed benefits to the claimant in connection with the new benefit year, provided the claimant was otherwise eligible, and held

that the employer account of Ted Lare Design Build, Inc. would not be charged for benefits in connection with the new benefit year.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(14)(a) and (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 section 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.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

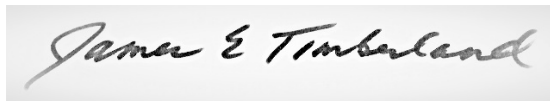
a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job 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 claimant did not refuse an offer of suitable work. The evidence indicates the employer made not offer of employment on or about December 12, 2021. The evidence further indicates the employer has made no offer of employment at any point since the claimant separated from the employer in April 2021. The claimant is eligible for benefits in connection with the December 12, 2021 original claim, provided the claimant meets all other eligibility requirements

DECISION:

The February 25, 2022 (reference 01) decision is AFFIRMED. The employer did not offer work and the claimant did not refuse suitable work on or about December 12, 2021. The claimant is eligible for benefits in connection with the December 12, 2021 original claim, provided the claimant meets all other eligibility requirements

Nothing in this decision disturbs the reference 03 decision that acknowledged the claimant's wages subsequent to his separation from this employer, that allowed benefits to the claimant in connection with the new benefit year, provided the claimant was otherwise eligible, and that held the employer account of Ted Lare Design Build, Inc. would not be charged for benefits in connection with the new benefit year.



James E. Timberland
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

jet/kmj