

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY D FORBES

Claimant

APPEAL 16A-UI-04800-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS CHEVROLET INC

Employer

OC: 01/17/16

Claimant: Appellant (2)

Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 21, 2016 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 10, 2016, Claimant participated. Employer participated through Doreen Sneller, Title clerk/office assistant. Official notice was taken of Agency records. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was offered a job as a "runner" during the period of his thirteenth through eighteenth week of his unemployment. The job was for three days per week, two 11-hours shifts and one 10-hour shift. It paid \$8.50 per hour. At 32 hours per week, the job would have paid \$272.00 per week. Per Agency records, the claimant's average weekly wage is \$315.69, thus 70 percent of his average weekly wage was \$220.00 per week.

The job would have required the claimant to be on his feet for long periods of time. Due to his physical condition, a knee replacement and plantar fasciitis, he is unable to stand for any long period of time. He had previously left a job that required him to be on his feet for hours at a time as he simply cannot stand. After discussing the job with Mr. Merritt, he learned that the position would require him to be on his feet for hours at a time. While the claimant does not have any medical restrictions, he was simply not able to accept the job because of the physical requirements. Additionally, the claimant's prior part-time work, was all done while working five or less hours per day, which was predominantly, 80 percent of the time sitting work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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) 100 percent, if the work is offered during the first five weeks of unemployment.

(2) 75 percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) 70 percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) 65 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.

The offer did meet the minimum wage requirements set out above for an offer to be considered suitable. However, the offer was unsuitable as it would require the claimant to stand for long periods of time, which he is physically unable to do. The job also required long shifts, which the claimant had not previously worked during his base period. After considering all of the physical requirements of the job, the type of work the claimant previously performed, and the length of his prior work shifts, the administrative law judge concludes the offer of work was not suitable, despite the fact that it met the minimum wage requirements. Thus, the claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

As the claimant never worked for Deery Brothers, their account is not subject to any charges for this claimant.

DECISION:

The April 21, 2016 (reference 01) decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/can