

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WESLEY S RILEY**  
Claimant

**WORKSOURCE INC**  
Employer

**APPEAL NO. 13A-UI-11387-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/28/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 25, 2013, (reference 04, amending reference 03) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on November 5, 2013 at Des Moines, Iowa. Claimant participated. Employer did participate through Kassandra Pickett, Recruiter.

**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 sent on several different assignments including a long-term assignment all of which he completed. He is still eligible for placement by the employer. On August 23, 2013 the employer contends that former employee, Holly Johnson, called the claimant and left him a voice mail message to call her as she had an assignment for him. Ms. Pickett alleges that on August 26 the claimant called back in, was offered an assignment building boxes and refused the assignment. The claimant denies ever being offered the assignment. Ms. Pickett did not hear Holly Johnson make the actual offer she only heard Ms. Johnson tell her that she had made the offer and the claimant had refused. Ms. Johnson did not note in the employer files that she had made the offer to the claimant and that he had refused. The claimant had never refused any other offers of work from the employer and the offer made to him pays more than the employment he currently has.

**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) 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.

A telephone message left for the claimant is not sufficient to qualify as an offer of work under the code section set out above. The employer has the burden of proving that an actual offer of work was made to the claimant. Under these circumstances the administrative law judge

cannot conclude that an actual offer of work was made to the claimant. The claimant was the only party to testify with first-hand knowledge and the employer's own notes do not reflect an actual offer of work to the claimant. Since the employer did not establish that the claimant was actually given an offer of work, no disqualification can be imposed and benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 25, 2013, reference 04 amending reference 03, decision is reversed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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