

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSTY J BARKER
Claimant

APPEAL NO. 15A-UI-03825-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S & S DURA-LINE TRAILERS INC
Employer

OC: 02/08/15
Claimant: Respondent (2)

Iowa Code Section 96.5(3) – Work Refusal re Former Employer
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 24, 2015, reference 05, decision that allowed benefits to the claimant provided he was otherwise eligible based on an Agency conclusion that the claimant had good cause for refusing unsuitable work on March 9, 2015. After due notice was issued, a hearing was held on May 18, 2015. Claimant Rusty Barker did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Ronald Smith represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and the claimant's weekly claims for benefits (KCCO). The administrative law judge took official notice of the February 26, 2015, reference 03, decision.

ISSUES:

Whether the claimant refused suitable work on or about March 9, 2015 without good cause.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rusty Barker established a claim for unemployment insurance benefits that was effective February 8, 2015. Mr. Barker claimed benefits for the period of February 8, 2015 through April 4, 2015. Mr. Barker's weekly benefit amount was set at \$244. Mr. Barker received that amount in benefits for each of the eight weeks between February 8, 2015 and April 4, 2015. Mr. Barker reported zero job contacts throughout the period of his claim.

Mr. Barker had filed his claim for benefits in response to an involuntary separation on January 29, 2015 from employment with S & S Dura-Line Trailers, Inc. Mr. Barker had worked for the employer as a full-time welder. The employer had decided to end the employment due to a need to reduce staff, due to Mr. Barker being the most recent hire, and due to dissatisfaction with the quality of Mr. Barker's welding work.

On February 26, 2015, a Workforce Development claims deputy entered a reference 03 decision that allowed benefits to Mr. Barker provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged no disqualifying reason when his position was eliminated.

On March 2, 2015, Forewoman Tammy Mai, telephoned Mr. Barker to recall him to the same employment on Monday, March 9, 2015. Mr. Barker told Ms. Mai that he would get back to her regarding whether he would return. On March 4, 2015, Mr. Barker sent a text message to Ms. Mai indicating that he would return on Monday, March 9, 2015. Mr. Barker then did not return to work or make further contact with the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-3-b 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.

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)(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 § 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.

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 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, it must first be established that a bona fide offer of work was made to the individual by personal contact 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 weight of the evidence establishes that the employer made a bona fide offer of employment through personal contact with the claimant on March 2, 2015. The claimant indicated at that time that he would return on March 9, 2015. The claimant reaffirmed acceptance of the employment by text message on March 4, 2015. The claimant's conduct then indicated a definite refusal of the offer of employment, when the claimant did not return work or make further contact with the employer. The claimant had an active claim at the time the employer was in contact with him regarding the employer's attempt to recall him to the employment. The employment was the same employment the claimant had previously performed for the employer. There is no indication the work paid less than the prevailing rate, no indication that the position was open due to a labor dispute, and no indication that the claimant would be compelled to join a union or forgo joining a union. The claimant has failed to present any evidence to establish that the offered employment was unsuitable or that he had good cause for refusing the offer of employment. The weight of the evidence indicates that the work was indeed suitable.

The claimant refused an offer of suitable work effective March 9, 2015 without good cause. Effective March 8, 2015, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for benefits, the claimant must repay the benefits. Because this decision disqualified Mr. Barker for benefits effective March 8, 2015, the \$976 in benefits that Mr. Barker received for the four-week period of March 8, 2015 through April 4, 2015 constitutes an overpayment of benefits that Mr. Barker must repay.

DECISION:

The March 24, 2015, reference 05, decision is reversed. The claimant refused an offer of suitable work effective March 9, 2015 without good cause. Effective March 9, 2015, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$976 benefits for the four-week period of March 8, 2015 through April 4, 2015. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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