

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW S ROYCE
Claimant

DIG N IT L.L.C.
Employer

APPEAL 18A-UI-03866-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
Claimant: Appellant (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 21, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 20, 2018. Claimant participated. Daniel Hornbacher participated on claimant's behalf. Employer did not register for the hearing and did not participate. Official notice was taken of the administrative record with no objection.

ISSUE:

Was a suitable offer of work made to the claimant? If so, did the claimant fail to accept and 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 employer did not make an offer of work to claimant on January 12, 2018. Claimant testified he never received an offer of work to return to the employer. Claimant's job duties for the employer involved digging and burying phone lines, not remodeling.

Around December 21, 2017, was the last day claimant performed work for the employer before he was placed on a seasonal layoff. Claimant filed a claim for benefits with an effective date of December 24, 2017 after he was placed on a seasonal layoff. The owner of the employer, Kurt, had spoken to claimant about remodeling a house during the seasonal layoff, but Kurt never discussed the rate of pay or a start date with claimant.

On January 25, 2018, claimant asked Kurt about the remodeling job. Kurt told claimant that he would get back with claimant, but Kurt never contacted claimant about starting work.

On April 3, 2018, Kurt sent claimant a text message that if he wanted to return to work to let him know and he will setup a time to return from the seasonal layoff. Kurt did not tell claimant when he could return to work. Claimant did not return Kurt's message because he was interviewing for a different job with a different company. Claimant believes he has separated from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant. Benefits are allowed.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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.

Claimant testified the employer did not make him an offer of work on January 12, 2018. Although the employer had previously mentioned to claimant about the possibility of remodeling a house, the employer never communicated a bona fide offer of work to claimant. The employer never made an offer of work to claimant that included a start date, hours of work, and pay rate. Furthermore, the job duties for remodeling a house were different than claimant's normal job duties (digging and burying phone lines) for the employer. Since the employer did not make a bona fide offer of work to claimant, benefits are allowed.

DECISION:

The March 21, 2018, (reference 02) decision is reversed. The employer did not communicate an offer of work to claimant on January 12, 2018. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs