

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEHMED H HUSIDIC
Claimant

APPEAL NO. 15A-UI-01919-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KARR TUCKPOINTING LLC
Employer

OC: 04/27/14
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 6, 2015, reference 02, decision that allowed benefits to the claimant 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 refused work on January 22, 2015 for good cause. After due notice was issued, a hearing was held on March 17, 2015. Claimant Mehmed Husidic did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Attorney Bradley Strouse represented the employer and presented testimony through Jack Geiger. Exhibit Two and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the claimant refused an offer of suitable work on or about January 22, 2015 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mehmed Husidic was employed by Karr Tuckpointing, L.L.C., as a full-time tuckpointer/mason from April 2014 and last performed work for the employer on December 22, 2014. At that time the employer temporarily laid off Mr. Husidic. The employer required that Ms. Husidic maintain weekly contact with the employer during the temporary layoff.

On January 22, 2015, Mr. Husidic stopped at the workplace and spoke with Jack Geiger, owner. Mr. Husidic asked Mr. Geiger when the employer would be recalling him to work. Mr. Geiger told Mr. Husidic that he had work for Mr. Husidic effective January 25, 2015 and that the work would be in Columbia, Missouri. Mr. Husidic understood that the pay would involve the same sort of work he had previously performed for the employer, at the same wages, and under the same conditions. Mr. Husidic told the employer that he would not work under a particular supervisor, Jasmine, and that he would not work in Columbia, Missouri.

The employer does masonry contracting work in a 10-state area. At the time Mr. Husidic started with the employer, he understood that the employment required out-of-state travel. During

Mr. Husidic's employment, he had performed work for the employer in Iowa, Missouri, Minnesota, North Dakota, South Dakota, Nebraska, Indiana, Michigan, Oklahoma and Texas. The regular practice was for the crew to travel to the jobsite for several days at a time and periodically return home. The employer provides transportation from the employer's shop in Vinton. The employer provided lodging and a food stipend.

At the time Mr. Husidic refused recall to the employment, he did not provide the employer with a reason for doing so. The employer told Mr. Husidic that the work in Missouri was the only work the employer had available at the time. Mr. Husidic returned his work tools the next day.

Mr. Husidic had established an additional claim for benefits in response to being temporarily laid off from the employment. The additional claim was effective December 7, 2014. Mr. Husidic received benefits for the six-week period of December 14, 2014 through January 24, 2015. Mr. Husidic then discontinued his claim for benefits.

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.

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.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The evidence in the record establishes that the employer made a bona fide offer of suitable work on January 22, 2015. The employer provided notice of recall to the employment through personal contact with Mr. Husidic. Mr. Husidic made a definite refusal of recall to the employment. The evidence fails to establish good cause for Mr. Husidic's refusal of recall to the employer. Travel was a basic component of the employment and Mr. Husidic had traveled many times to perform his work duties. Effective January 25, 2015, Mr. Husidic is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Husidic must meet all other eligibility requirements.

DECISION:

The February 6, 2015, reference 02, decision is reversed. The claimant refused recall to suitable employment on January 22, 2015. The recall was to be effective January 25, 2015.

Effective January 25, 2015, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times the weekly benefit amount. The claimant must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs