

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOEL T BELL
Claimant

APPEAL NO. 10A-UI-01713-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FOODS GROUP LLC
Employer

OC: 12/21/08
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 25, 2010, reference 08, that concluded the claimant was not subject to disqualification for refusing work offered on August 17, 2009. A telephone hearing was held on March 11, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Wilda Lampe participated in the hearing on behalf of the employer. Exhibits 1-4 were admitted into evidence at the hearing.

ISSUE:

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits in December 2008 after his employer, Detroit Tool Metal, closed its business.

The claimant worked for the employer as a production technician from March 30, 2009, to August 2, 2009, when he was laid off temporarily due to lack of orders. When he was hired, he was informed that he would be working a minimum of Tuesday, Thursday, and Friday for 30 hours per week.

At the beginning of August 2009, the claimant was informed that he would be called to work when the employer needed him. He worked on that basis on August 11, 13, and 14.

On Monday, August 17, a supervisor called the claimant and offered him work later that day. The claimant initially said he could work but called back after he was unsuccessful in finding a babysitter to care for his three-year-old son. He let the supervisor know he could not work and why. The supervisor told him that since he said he was not going to work, he was going to have to call in on the absence line and it would be counted as an absence. The claimant called in and reported that he could not work.

The supervisor telephoned and left messages about additional days of work on August 18-22 and August 24, but the claimant had already accepted a full-time construction job so he did not return the calls.

The claimant reopened his claim December 6, 2009, after he was laid off from his construction job.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the claimant is subject to disqualification for refusing work on August 17. At the beginning of the hearing, I alerted the parties that the issues of voluntary quit or discharge might be involved in this case. I have concluded, however, that the claimant was working as needed and finished his work for the week of August 14 and was not informed of any additional work until August 17. Under 871 IAC 24.26(19), someone working temporary work assignments without scheduled work fulfills the contract of hire when each of the assignments is completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. Based on the rule, only the provisions of the refusal of suitable work disqualification and availability requirement apply.

Iowa Code section 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....

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.

I concluded that the claimant had good cause to decline the offer of work made on August 17 because he did not know about the work available until that day, which was not a normal day of work. He had a good reason to decline the job due to babysitting problems. He would still be considered available for work under Iowa Code section 96.4-3 because he was available to work for a majority of the work week.

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.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The claimant is not subject to disqualification in regard to the phone calls made to him after August 17, because no bona fide offers were made by personal contact or registered letter and he was gainfully employed elsewhere when he received the messages left for him.

DECISION:

The unemployment insurance decision dated January 25, 2010, reference 08, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs