

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E OLSEN
Claimant

APPEAL NO. 12A-UI-14513-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BCP LIVE INC
Employer

OC: 11/25/12
Claimant: Respondent (1)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, BCP Live, Inc. (BCP), filed an appeal from a decision dated December 10, 2012, reference 02. The decision allowed benefits to the claimant, James Olsen. After due notice was issued, a hearing was held by telephone conference call on January 15, 2013. The claimant participated on his own behalf. The employer participated by Co-Owner Jake Feldman.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

James Olsen filed a claim for unemployment benefits with an effective date of November 25, 2012. He had a prior claim effective March 22, 2009. He worked briefly as a disc jockey for BCP Live in March 2012, and was offered other jobs for high school proms that same month. He refused the jobs because he had already committed to working other engagements on those dates through his own business.

REASONING AND CONCLUSIONS OF LAW:

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. 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(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 claimant cannot be disqualified because the offers of work, and the refusals, were all made at a time when he did not have an active unemployment claim. Under the provisions of the above Administrative Code section, disqualification may not be imposed unless the offer of work and the refusal occurred during an active benefit year.

DECISION:

The representative's decision of December 10, 2012, reference 02, is affirmed. James Olsen is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css