

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD D PETER**  
Claimant

**APPEAL NO. 09A-UI-15337-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ERICKSON TRUCKS N PARTS**  
Employer

**OC: 01-04-09**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 5, 2009, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on November 13, 2009. The claimant did participate. The employer did not participate. Department's Exhibit D-1 was received.

**ISSUE:**

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a truck driver full time beginning May 1, 2009 through date of hearing as he remains employed.

The claimant has not worked since late September 2009 when he refused to perform long haul trips for the employer. The claimant refused the work because he wanted it to go to other employees who had more experience. At hearing the claimant specifically indicated that he did not refuse the long hauls because of any equipment problem or malfunction. The claimant was hired to drive all types of equipment and all types of routes. Employer made an offer of work to claimant on September 16, 2009. The employer wanted the claimant to drive a long haul in a truck. The wage offered for the job is comparable to the going rate of pay for similar work in the claimant's area.

The employer called after the hearing record had been closed and had not followed the hearing notice instructions pursuant to 871 IAC 26.14(7)a-c.

The employer received the hearing notice prior to the November 13, 2009 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer directly contacted the Appeals Section was on November 13, 2009, after the scheduled start time for the hearing and after the hearing

record had been closed. The employer had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue in this case is whether the employer's request to reopen the hearing should be granted or denied.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The first time the employer called the Appeals Section for the November 13, 2009 hearing was after the hearing had been closed. Although the employer may have intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

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.

The offer was suitable as it did meet the minimum wage requirements and claimant did not have a good cause reason for the refusal. The claimant was hired to drive and refused to do so because he wanted others with more experience to drive long hauls. Such circumstances are not good cause reason for refusing to work. Benefits are denied.

**DECISION:**

The October 5, 2009, reference 06, decision is affirmed. Claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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