

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN L CAVIL
Claimant

APPEAL NO: 10A-UI-08260-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCCALL CO INC
CLEAN DES MOINES
Employer

OC: 01/10/10
Claimant: Appellant (4)

Section 96.5-1 – Voluntary Leaving
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

Kevin L. Cavil (claimant) appealed a representative’s June 7, 2010 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with McCall Company, Inc. / Clean Des Moines (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a person hearing was held on August 19, 2010. The claimant participated in the hearing by telephone. The employer participated in person, represented by Greg McCall with testimony from one other witness, Ronnie Shelly. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work without good cause? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on March 5, 2010. He worked near full time hours (35 to 40 hours per week) as a housekeeper at a shopping mall business client. He typically worked 12:00 p.m. to 9:00 p.m. Monday through Saturday, and 11:00 a.m. to 5:30 p.m. His last day of work was May 3, 2010.

As of May 3 the employer lost the contract for cleaning at the shopping mall. On or about May 4 the employer offered the claimant a position at another location, but at that time the employer could only assure the claimant about 20 hours per week. The shift would have been from about 3:00 a.m. or 4:00 a.m. for four hours, five days per week, but it would have been at a location difficult for the claimant to reach given his transportation limitations for that time and location. As a result, the claimant declined the position offered by the employer at that time.

The claimant established an unemployment insurance benefit year effective January 10, 2010. He reopened his claim by filing an additional claim effective May 9, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code § 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.

Rule 871 IAC 24.24(14)(a) provides, "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 position offered by the employer to the claimant on or about May 4 was not "comparable" to the position in which the claimant had previously been working in terms of the number of hours or the schedule for work." Further, he

had transportation arrangements for the position with the employer he had originally accepted, and could obtain similar transportation for similar jobs, but he did not have reliable transportation for the shifts and location offered to him by the employer. He had good cause for declining the offer.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period is fourth quarter 2008 (beginning October 1, 2008 through the third quarter 2009 (ending September 30, 2009). The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's June 7, 2010 decision (reference 04) is modified in favor of the claimant. The claimant is not disqualified for declining the offer of work with the employer; the position was not comparable to his prior employment arrangement, and he had good cause for declining the position. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs