

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE KREGEL
Claimant

APPEAL NO: 07A-UI-02350-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FUELLING TRUCKING
Employer

OC: 12/03/06 R: 04
Claimant: Appellant (1)

Section 96.4-3 - Availability for Work
Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Kyle Kregel (claimant) appealed an unemployment insurance decision dated February 22, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits because he refused recall to suitable work with Fuelling Trucking (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2007. The claimant participated in the hearing. The employer participated through owner Jim Fuelling. 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.

ISSUE:

The issue is whether the claimant refused recall to suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time truck driver from May 2006 through November 24, 2006 when he was discharged. He had been in an accident and the employer's insurance carrier would no longer cover the claimant. The employer continued to look for another insurance provider who would cover the claimant and he found a new company in January 2007. The claimant was offered work on January 8, 2007. He accepted the offer and was scheduled to begin working on January 11, 2007 but failed to call or report to work. The employer never heard from the claimant after that.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is able and available for work. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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(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 section 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.

The employer offered the claimant his previous job since the employer was able to find a new insurance company that would cover the claimant. The claimant accepted the offer of work but failed to call or report to work. He testified that he told the employer he needed a week before returning and the employer never called him after that. The claimant acknowledged he could have contacted the employer if he truly wanted to work but admitted he was not ready to return to work. Inasmuch as the claimant was offered his previous employment, the administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, he is disqualified and benefits are denied.

DECISION:

The unemployment insurance decision dated February 22, 2007, reference 02, is affirmed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs