

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J GURWELL
Claimant

APPEAL NO. 15A-UI-13860-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOMAR DISTRIBUTING INC
Employer

OC: 11/29/15
Claimant: Respondent (1/R)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Lomar Distributing (employer) appealed a representative's December 15, 2015, decision (reference 01) that concluded Dustin Gurwell (claimant) was eligible to receive unemployment insurance benefits because there was no offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 13, 2016. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Caleb Cork, Human Resources Coordinator. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant refused an offer of 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 worked for the employer from August 19, 2013, to October 24, 2014, as a part-time warehouse generalist. The claimant did not appear for work after October 24, 2014. The claimant filed his claim for unemployment insurance benefits on November 29, 2015. On December 10, 2015, the employer completed the Notice of Claim. It accidentally stated the claimant refused suitable work or recall to work on October 29, 2014. No offer of work was made on that date. The employer meant to mark the box indicating the claimant voluntarily quit work.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not refuse an offer of suitable 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.

Iowa Admin. Code r. 871-24.24(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.

No offer of work was made by the employer to the claimant. The claimant filed his claim for benefits on November 29, 2015. The claimant is qualified to receive benefits, provided he is otherwise eligible.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's December 15, 2015, decision (reference 01) is affirmed. The claimant is qualified to receive benefits, provided he is otherwise eligible. The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs