

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH H SEMLER
Claimant

APPEAL NO. 11A-UI-03548-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISIONS STRUCTURES INC
Employer

OC: 02/28/10
Claimant: Respondent (1)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Joseph Semler, filed an appeal from a decision dated March 14, 2011, reference 01. The decision allowed benefits to the claimant, Joseph Semler. After due notice was issued a hearing was held by telephone conference call on April 12, 2011. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by President Chris Harmsen.

ISSUE:

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

FINDINGS OF FACT:

Joseph Semler was employed by Precision Structures until April 14, 2009, as a full-time foreman. On April 26, 2010, a year after the separation, Owner Chris Harmsen left two voice mail messages on the claimant's phone number of record asking Mr. Semler to return his call because the company had some job openings. The message did not refer to a specific job only that Mr. Harmsen wanted to talk to Mr. Semler about returning to work.

The claimant never returned the calls but a week later the employer encountered the claimant's father. The father said Mr. Semler had moved to Iowa City, Iowa, where he was working for another company.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.24(1)a provides:

- (1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer did not make an offer of work to the claimant for a specific job. There was also no personal contact with the claimant. Leaving voice mail messages stating only that there were "openings" and asking for a return call does not constitute a bona fide offer of work.

In addition, it appears the claimant was already employed elsewhere which is good reason for refusing an offer of work under 871 IAC 24.24(7).

DECISION:

The representative's decision of March 14, 2011, reference 01, is affirmed. Joseph Semler is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs