

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE A. KESTER**

Claimant

**APPEAL NO: 17A-UI-06092-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHERWOOD COMPANY INC**

Employer

**OC: 05/07/17**

**Claimant: Respondent (1)**

Section 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 12, 2017, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 29, 2017. The claimant participated in the hearing. Jerry Sherwood, Co-Owner; Becky Sherwood, Co-Owner; and Tyler Sherwood, Vice-President; participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant separated from employment with this employer May 10, 2017, after the employer reduced his pay. The parties disagree about whether the separation was a voluntary leaving or a termination but that matter was adjudicated in Appeal Number 17A-UI-05727-JC-T which was issued June 29, 2017.

Vice-President Tyler Sherwood called the claimant after he left May 10, 2017, but the claimant did not answer. Mr. Sherwood then texted the claimant and told him he needed to bring the employer's credit card back because he was supposed to leave it with the employer every evening. The claimant responded by text that he would bring the credit card back when he came in to pick up his check May 12, 2017. When the claimant went to get his check May 12, 2017, Mr. Sherwood told him his employment was not terminated and he should wear jeans and boots Monday, May 15, 2017, because he would be setting up tents at the ammunition plant. The claimant had never worked on the tent crew before. When the claimant opened his paycheck he noticed his pay had been cut from \$20.00 per hour to \$17.00 per hour. Additionally, Vice-President Steve Probst told the claimant that Co-Owner Becky Sherwood told him the claimant's pay was going to be cut by \$3.00 per hour and then by \$5.00 per hour because he was not reliable. The claimant did not check with Ms. Sherwood or her husband, Co-Owner Jerry Sherwood, about his pay, even though they do all of the hiring and firing and handle everything to do with pay, raises and benefits. Instead he relied on Mr. Probst's statement. The employer did cut the claimant's pay by \$3.00 an hour. The claimant did not call

or show up for work on the tent crew Monday, May 15, 2017. At 4:08 p.m. Mr. Sherwood (Tyler) texted the claimant and stated, "I take it you voluntarily quit because you were a no-call no-show today." The claimant wrote back and stated, "I have been told by several people I don't have to accept your offer."

The employer attempted to call the claimant approximately two more times after May 15, 2017, but never made contact with him. The claimant's average weekly wage is \$920.53. If there was an offer, it was made in the claimant's first week of unemployment.

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

For the reasons that follow, the administrative law judge concludes the claimant did not refuse 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The employer never made a bona fide offer of work, as that term is defined by Iowa law, to the claimant following his separation from employment May 10, 2017. The employer did not believe there had been a separation from employment as of May 12, 2017, the date the claimant came in to pick up his check, as evidenced by the fact it directed the claimant to report for work Monday, May 15, 2017, in jeans and boots to put up tents at the ammunition plant and said the claimant's employment was not terminated. That work instruction was a continuation of the claimant's employment from the employer's perspective and not a new offer of work. Additionally, even if it were to be considered a bona fide job offer, the employer had cut the claimant's pay from \$20.00 to \$17.00 and the claimant's average weekly wage is \$920.53. The offer would have been unsuitable, as the \$17.00 per hour did not meet the minimum wage requirements set out above for an offer to be considered suitable. Therefore, benefits are allowed.

**DECISION:**

The June 12, 2017, reference 03, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn