

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAVE CASTRO
Claimant

APPEAL NO: 19A-UI-04482-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 03/31/19
Claimant: Appellant (1R)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant, Dave Castro, filed an appeal from the May 24, 2019, (reference 06) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 26, 2019. The claimant participated. The employer, Menard Inc., participated through Beth Muth. Eryn Johnson attended as an observer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibit 1 and Claimant Exhibit A were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant refuse to accept a suitable offer of work with this employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Claimant established a claim for unemployment insurance benefits effective March 31, 2019 in response to separation from his full-time employment as a baker with Eastmill.

The Claimant applied for a full-time or part-time position in the warehouse, and the Employer made an offer of work to the claimant on April 19, 2019. That offer included the following terms: A part-time morning stocker position was available effective May 1, 2019. The claimant would work approximately twenty hours per week, earning \$11.00 per hour. If the claimant worked weekend shifts, he could also earn \$14.00 per hour for those shifts. Claimant's average weekly wage is \$971.38. The offer was made in the third week of unemployment. After reviewing the wages, the claimant declined the offer for the job on April 30, 2019. He stated to the employer in a voicemail on May 1, 2019 that "family issues had come up" and at the hearing confirmed that he had family issues during the week ending May 4, 2019 which prevented him from working.

Thereafter, the claimant did work for one month for Express Services from May 13-June 17, 2019. The issue of the claimant's separation from that employer has not yet been adjudicated by the Benefits Bureau. On June 18, 2019, the claimant suffered from a stroke and is under medical care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was not suitable.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

“In order for work to be considered ‘suitable’ under section 96.5(3), it is mandatory that the gross weekly wages equal or exceed the statutorily prescribed percentages of base period wages. If gross weekly wages for the work do not equal or exceed those sums, the work is unsuitable as a matter of law and the actual motive of a claimant in refusing the work is immaterial.” *Biltmore Enterprises, Inc. v. Iowa Dept. of Job Service*, 334 N.W.2d 284, 287 (Iowa 1983). Thus it matters not why the Claimant turned down the work if the offer was monetarily insufficient.

The offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable, even if the claimant worked all twenty hours per week at \$14.00 per hour, rather than \$11.00 per hour as offered. Accordingly, benefits are allowed provided claimant is otherwise eligible.

REMAND: The following issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination:

1. The claimant's separation from employment with Express Services Inc., effective June 17, 2019.
2. Whether the claimant was able to and available for work for the week ending May 4, 2019 due to family issues.
3. Whether the claimant is able to and available for work effective June 18, 2019 due to his personal medical condition.

DECISION:

The May 24, 2019, (reference 06) decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided he is otherwise eligible. **REMAND:** The issues of whether the claimant's June 17, 2019 separation from Express Services Inc. and whether the claimant is able to and available for work effective May 4, 2019 (due to family issues and illness) are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn