

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OSCAR ROBLES

Claimant

APPEAL NO. 15A-UI-05006-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAINBRIDGE CONSTRUCTION LLC

Employer

OC: 01/18/15

Claimant: Respondent (4)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 21, 2015, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible based on an Agency conclusion that Bainbridge Construction, L.L.C., had not made a bona fide offer of suitable work on March 2, 2015. After due notice was issued, a hearing was held on June 4, 2015. Claimant Oscar Robles was at work with the employer at the time of the hearing and the employer made appropriate arrangements for the claimant to participate. Colleen Bainbridge represented the employer and presented additional testimony through Shawn Bainbridge. Spanish-English interpreter Anna Pottebaum assisted with the hearing. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO) and of the claimant's weekly claims for benefits (KCCO).

ISSUE:

Whether the claimant refused a bona fide offer of suitable work on or about March 2, 2015 without good cause.

Whether the claimant has been able to work and available for work since March 2, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Oscar Robles commenced his employment with Bainbridge Construction, L.L.C., in 2012. Mr. Robles has performed work for the employer as a concrete construction laborer. Mr. Robles' brother, Rene, also works for the employer. In keeping with the prior pattern of employment, the employer laid the brothers off in November 2014. Foreman Shawn Bainbridge is their immediate supervisor. At the time of the layoff, Mr. Bainbridge notified the brothers that the employer would recall them to the employment when work started. The employer had a contact telephone number for the brothers as well as their street address in Sioux City. The brothers told foreman Shawn Bainbridge that they would be traveling to Mexico, as was their habit during the winter months. Their mother and other family members reside in Mexico. The brothers did

indeed travel to Mexico shortly after being laid off. The brothers returned to Iowa on February 15, 2015, but did not take any steps to alert the employer to their return until on or about May 20, 2015.

On Monday, March 2, 2015, Shawn Bainbridge attempted to contact the brothers at the only contact number the employer had for the brothers to let them know that work would be starting soon. The brothers' contact number was out of service. The employer did not have an alternative contact number for the brothers. The employer did not mail notice to the brothers that the employer was about to start work again. The employer was unsure whether the brothers still resided at the same address. The employer restarted work on March 16, 2015 without the Robles brothers. On or about May 20, 2015, Rene Robles made contact with Shawn Bainbridge to indicate that the brothers were ready to return to work. The brothers returned to work on May 28, 2015.

Mr. Robles established a claim for benefits that was effective January 18, 2015. Mr. Robles received \$448.00 in unemployment insurance benefits for each of the 12 weeks between January 18, 2015 and April 11, 2015. Mr. Robles used the voice response unit (automated telephone claims reporting system) to make weekly claims for each of the 12 weeks between January 18, 2015 and April 11, 2015. For each of those weeks, Mr. Robles reported that he was not working and had no wages to report, was able and available for work, had not refused any work, and had no job searches to report. Mr. Robles did not look for any other employment.

On April 21, 2015, Iowa Workforce Development mailed a notice to Mr. Robles that, effective immediately, Mr. Robles was required to make two job contacts during each week for which he claimed unemployment insurance benefits. By the time that notice was mailed, Mr. Robles had already discontinued his claim for benefits. Mr. Robles asserts that he did not receive the April 21, 2015 notice.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

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.

Iowa Admin. Code r. 871-24.24(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 § 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.

Iowa Code § 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Administrative Code rule 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 ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... 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.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence establishes that there was not offer of employment on or about March 2, 2015. The employer did not make personal contact with the claimant and the claimant did not make a definite refusal. Accordingly, no disqualification will enter based on the alleged March 2, 2015 work refusal.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

While the employer has the burden of proof in connection with the work refusal issue, the claimant has the burden of proof regarding the issues of whether he is able to work and available for work. The weight of the evidence indicates that the employer had work available for the claimant effective March 16, 2015. The claimant was still at that point attached to the employment, but had not taken appropriate steps to make himself available for work with the employer. The claimant had discontinued service to the only contact number the employer had for the claimant. Neither the claimant nor his brother took any steps to notify the employer that they had returned from Mexico on February 15, 2015. The claimant's brother finally made contact with the employer on or about May 20, 2015. Because the claimant was not available for the work the employer had for the claimant during the period of March 16, 2015 through April 11, 2015, when the claimant discontinued his claim for benefits, the claimant is not eligible for benefits for the four-week week period of March 15, 2015 through April 11, 2015.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for benefits, the claimant must repay the benefits and Workforce Development must repay the benefits, even if the claimant was not at fault in receiving the benefits. Because this decision disqualifies the claimant for benefits for the four-week period of March 15, 2015 and April 11, 2015 due to the claimant being unavailable for work during that period, the \$1,792.00 in benefits that the claimant received for that period constitutes an overpayment. The claimant must repay that amount.

DECISION:

The April 21, 2015, reference 01, decision is modified as follows. There was no bona fide offer of employment on or about March 2, 2015 and no refusal of suitable work. No disqualification will enter based on alleged work refusal. The employer had work available during the four-week period of March 15, 2015 through April 11, 2015, but the claimant was not available for work. Accordingly, the claimant is not eligible for benefits for the four-week period of March 15, 2015 through April 11, 2015. Based on the work availability disqualification, the claimant was overpaid \$1,792.00 in benefits for that period. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs