

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD R DUFFIELD
Claimant

APPEAL NO: 09A-UI-05780-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARNES PAINTING COMPANY
Employer

OC: 11/03/08

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Barnes Painting Company (employer)) appealed a representative's April 3, 2009 decision (reference 01) that concluded Donald R. Duffield (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2009. The claimant participated in the hearing. David Barnes appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work or recall without good cause? Is he adequately able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on or about October 15, 2006. He works as a painter in the employer's commercial and residential painting business. His job is subject to periodic layoffs. Until about February 23, 2009, all of the claimant's work had been within an hour drive of his home in Red Oak. On about February 23 the claimant was assigned to a crew working on a project in Marshalltown, a drive of about 350 miles round trip, about three hours one way. The crew would go at the beginning of the week, stay in a motel, and then come back to Red Oak for the weekend. The claimant did this for the week of February 23 and the week of March 2. However, when the employer called him to do this job on March 9, the claimant declined due to family issues concerning a special needs child which necessitate that he be able to be home each evening.

The claimant continues to be available for work in the area within an hour drive of Red Oak.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work without good cause.

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.

Distance to the new work can be good cause for a claimant to decline an offer of work, particularly where the work with the employer had previously always been local and there had been no understanding between the parties that additional travel might be required. 871 IAC 24.24(10), (15).

A family or child problem can also be good cause for declining work, although that then calls into question the general availability of the claimant. 871 IAC 24.24(4). With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. However, as long as the claimant remains able and available for work to the same degree as he had during the past approximately year and a half, he is still considered able and available for work. 871 IAC 24.22(2).

The claimant did decline an offer of recall to work, but for good cause that will not disqualify him. He is adequately able and available for work to the same degree as he was during the period when his base period wage credits were accrued.

DECISION:

The representative's April 3, 2009 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work without good cause. He is currently adequately able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs