

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRIC A BOGUE

Claimant

APPEAL NO. 10A-UI-13290-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KBS OF DELAWARE LLC

Employer

OC: 07/04/10

Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 16, 2010 (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 10, 2010. Claimant participated. Employer participated through regional manager Mark Schwiesow. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant refused a suitable offer of work and if so, whether the refusal was for a good cause reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On May 17 employer made claimant a job offer for a retail cleaning position in Des Moines at Gordman's for five hours per day, six days per week at an undecided rate of pay. About a week later regional vice president Chris Grochows offered claimant a position with a full-time wax stripping crew working in North and South Dakota, Iowa, and Nebraska. Again, the rate of pay was undecided. Claimant would be responsible for his own transportation but the reimbursement rate was 17 cents per mile, which would not cover his expenses.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code section 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(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

871 IAC 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.

The offer was unsuitable, as it did not specify a wage or otherwise meet the minimum wage requirements set out above for an offer to be considered suitable. Furthermore, the

administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed.

DECISION:

The September 16, 2010 (reference 03) decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs