

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY GARNICA
Claimant

HANDICAPPED DEVELOPMENT CENTER
Employer

APPEAL NO. 21A-UI-14580-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Respondent (2R)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 22, 2021, reference 05, decision that allowed benefits to the claimant, provided he met all other eligibility requirements, based on the deputy's conclusion that the claimant had not accepted an offer of work with Handicapped Development on August 26, 2020, but had good cause because the pay was bellowing the prevailing rate. After due notice was issued, a hearing was held on August 20, 2021. The claimant, Timothy Garnica, did not provide a telephone number for the hearing and did not participate. Amanda Pickett, Director of Human Resources, represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, WAGE-A and WAGE-C.

ISSUE:

Whether the claimant refused an offer of suitable work without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: This employer's first contact with the claimant occurred on August 3, 2020, when the claimant applied for the posted open position of full-time maintenance technician. The job posting set for the starting wage, \$12.00 an hour. After the claimant submitted his application, he participated in a screening telephone call with the employer, which then led to an interview, where the employer provided the work duties, the work hours, and the starting wage. The work duties were to perform routine maintenance, painting and small repairs. The work hours were 7:00 a.m. to 3:30 p.m. The starting wage was set at \$12.00 an hour. On August 20, 2020, after the claimant indicated the proposed terms were acceptable to him, Kristi Hestness, Human Resources Associate, called the claimant and offered him the job. The claimant accepted the offer of employment. On August 21, 2020, Amanda Pickett, Director of Human Resources, sent a letter to the claimant to confirm the offer of employment. The letter provided August 26, 2020 as the start date and directed the claimant to report at 7:30 a.m. on that date.

The claimant reported the workplace at 7:45 a.m. on August 26, 2020. In other words, the claimant reported to work late for his first day of employment. The claimant participated in an

onboarding orientation process that included completing appropriate tax and ID verification and review of the employee handbook. The claimant did not stay for the entire first day. On August 26, 2020, the claimant met with his supervisor, Todd Goldsberry, Environmental Services Director, and demanded a higher wage. The supervisor agreed to raise the wage by \$1.00 to \$13.00 an hour, but the claimant demanded \$15.00 an hour. When the employer refused to adjust the starting wage the claimant had accepted to \$15.00 an hour, the claimant said he was not able to continue in the employment and left. The claimant was at the workplace from 7:45 a.m. to 1:00 p.m. The claimant did not return to the employment.

On August 28, 2020, the claimant sent a text message to Ms. Hestness in which he state he had tried to negotiate the wage with the supervisor at the end of the day, that the employer could not pay what he was asking, and therefore he was requesting not to be paid for his day in the employment because it would mess up his unemployment insurance benefits.

The August 20, 2020 job offer and acceptance occurred during the 35th week of an unemployment insurance that was originated on September 29, 2019.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)(a) provides as follows:

Causes for disqualification.

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.

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 Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening 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.

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.

As the claimant acknowledged in his August 28, 2020 text message to the employer, this is not a work refusal case. On August 20, 2020, the claimant *accepted* a bona fide offer of full-time employment as a maintenance technician, with a \$12.00 starting wages. On August 26, 2020, the claimant *began* the full-time employment. After the claimant was already in the employment, the claimant attempted to substantially change the conditions of the employment by demanding a wage higher than the wage had accepted on August 20, 2020. The claimant then *separated* from the employment on August 20, 2020.

This matter will be remanded to the Benefits Bureau for an initial decision regarding the August 26, 2020 separation from the employment and for determination of whether the claimant has been available for work since August 23, 2020.

DECISION:

The June 22, 2021, reference 05, decision is reversed. This is not a work refusal case. Rather, the claimant commenced the employment on August 20, 2020, began the employment on August 26, 2020, and separated from the employment on August 26, 2020.

This matter is **remanded** to the Benefits Bureau for an initial decision regarding the August 26, 2020 separation from the employment and for determination of whether the claimant has been available for work since August 23, 2020.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

August 24, 2021
Decision Dated and Mailed

jet/ol