

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES R FITZGERALD
Claimant

L A LEASING INC
Employer

APPEAL 15A-UI-06962-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/26/15
Claimant: Respondent (2)**

Iowa Code §96.5(3)a – Work Refusal
Iowa Code § 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the June 11, 2015, (reference 05) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 22, 2015. Claimant did not participate. Employer participated through Colleen McGuinty and Joe Vermuelen, Branch Manager. Employer's Exhibit One was entered and received into the record.

ISSUES:

Did the claimant refuse a suitable offer of work?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 27, 2015 the claimant was offered full-time work as a machine operator at Premier Tooling in Peosta, Iowa on either the first or second shift. He was to be paid \$10.00 or \$10.50 per hour. The claimant's average weekly wage is \$200.65 per week. When he signed up for work the claimant indicated he did not want to work out of doors or for any fast food establishment. The claimant turned down the job because it was factory work. The claimant had previous work experience like the job offered to him by this employer. The claimant could have worked two full-time shifts before the end of the work week had he accepted the work.

The claimant received benefits in the amount of \$113.00 the week ending May 30, 2015, the week he was offered the job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work.

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.

The offer was suitable as it met the minimum wages requirements and was similar to the type of work the claimant had previously performed and claimant did not have a good-cause reason for the refusal. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant received \$113.00 in unemployment benefits to which he was not entitled as he did refuse a suitable offer of work. The claimant has been overpaid unemployment insurance benefits in the amount of \$113.00.

DECISION:

The June 11, 2015, reference 05, decision is reversed. Claimant did refuse a suitable offer of work. The claimant has been overpaid unemployment insurance benefits in the amount of \$113.00. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs