

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON E TROTTER**  
Claimant

**APPEAL NO. 07A-UI-01844-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MJM HOLDINGS INC**  
**SPECK USA INC**  
Employer

**OC: 11/12/06 R: 02**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

MJM Holdings, Inc./Speck USA, Inc. (employer) appealed a representative's February 15, 2007 decision (reference 08) that concluded Jason E. Trotter (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 March 8, 2007. The claimant participated in the hearing. Dean Zwemke appeared on the employer's behalf and presented testimony from one other witness, Rich Wood. 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 by not being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 10, 2006. He worked full time as a laborer in the employer's parking lot maintenance business. His last day of work was November 13, 2006. He was laid off at that time due to a seasonal lack of work. He was advised that should there be snow, he could be recalled to do snow removal.

After November 13, 2006, there were no attempts to contact the claimant to do snow removal before January 14, 2007, even though there were snow events and the claimant had waited at home on some of those occasions on the possibility of getting called. On January 14 Mr. Wood, the operations manager, attempted to call the claimant to come in to do snow removal at approximately 9:00 p.m. and again at approximately 9:15 p.m. No person answered either time, and he did not leave a voice message on the answering system either time. On January 15, Mr. Wood attempted to call the claimant at approximately 2:00 p.m.; he reached another person who was at the residence and left a message for the claimant to call. However, while the person who took the message gave the claimant a message to call "Rich," he did not understand it was Rich Wood with the employer, and thought it was friend of his also named "Rich." On January 21 Mr. Wood again attempted to call

the claimant; when no person answered, he did not leave a voice message on the answering system.

The claimant would have been agreeable to performing the snow removal work had the information been communicated to him, but had simply been unavailable for the phone calls at the four specific times Mr. Wood attempted to contact him. He continues to be able and available for work on the same basis as he had been during his period of employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The primary issue in this case is whether the claimant refused 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(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.

The employer did not make direct connection with the claimant; therefore, there was no bona fide offer of work and no definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

The secondary question is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

Iowa Code section 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".

Neither the statute nor the rules adopted thereunder require a claimant be "available" at all times of day or night to receive a call for a potential recall for work in order to be "able and available for work." The claimant is currently able and available for work. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's February 15, 2007 decision (reference 08) is affirmed. The claimant did not refuse a suitable offer of work, and he is 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/kjw