

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALBERT G CRUZ
Claimant

APPEAL NO. 08A-UI-07339-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONSON & SONS INC
Employer

OC: 08-03-08 R: 02
Claimant: Respondent (1-R)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 12, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 27, 2008. The claimant did participate. The employer did participate through Jennifer Cashman, Safety Director and Secretary, and (representative) Stacey Cox, Payroll Clerk. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work and did he refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant's employment ended after an alleged work-related accident. There has not been a fact-finding investigation or decision issued on the claimant's initial separation from employment from Monson and Sons, employer number 324121. Thereafter, he was offered to return to work for the employer on December 11, 2007 and January 8, 2008. The claimant did not have a valid claim for unemployment insurance benefits pending at the time.

Since then, the claimant has worked for another employer and now has permanent work restrictions against lifting over 50 pounds. The claimant is able to work with his work restrictions.

At hearing, the employer offered the claimant employment, but the claimant refused because he has another job offer pending.

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 § 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 administrative law judge does not have jurisdiction to evaluate the offer or refusal of work made on December 11, 2007 and January 8, 2008 since the offer of employment took place outside of the benefit year. The claimant's refusal of the offer of work made during the hearing was due to his pending employment and is good cause for refusing the employment. Benefits are allowed.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial review and determination.

DECISION:

The August 12, 2008, reference 02, decision is affirmed. Claimant did refuse an offer of work made outside of his benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw