

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD L DAVIDSON
Claimant

APPEAL NO. 17A-UI-02241-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ERIC J CLINE
Employer

OC: 12/11/16
Claimant: Respondent (2)

Iowa Code § 96.5(3)a – Refusal to accept an offer of suitable work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the representative's decision dated February 22, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits, finding that the claimant did not accept an offer of work with Eric J. Cline on January 9, 2017, because the job was not suitable due to circumstances related to his previous separation from the same employer. After due notice was provided, a telephone conference hearing was held on March 22, 2017. Although duly notified the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. Eric Cline, company owner.

ISSUE:

The issue is whether the claimant refused to accept an offer for suitable work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Edward Davidson was employed by Eric J. Cline d/b/a Cline Post Frame Construction Company for approximately 1.5 years before voluntarily leaving his employment with the company on August 10, 2016. Mr. Davidson was employed as a full-time general laborer and was paid \$15.00 per hour. His immediate supervisor was the company owner, Eric Cline.

Mr. Davidson had called off work on Tuesday, August 9, 2016. On that date, Mr. Davidson had stated that an injury to his head the previous day caused him to be dizzy and unable to work.

When the claimant arrived early for work on August 10, 2016, Mr. Cline stated that because the crew had worked very hard the preceding day, the start of work on August 10 would be somewhat delayed. Mr. Cline further stated to Mr. Davidson that he would get no sympathy from crew members for being absent the previous day because the crew had worked very hard. Mr. Davidson agreed to remain at the job site until work began that day, but returned a short time later and stated that he was quitting.

On or about January 9, 2017, the employer became aware that Mr. Davidson was receiving unemployment insurance benefits and the benefits were being charged to the employers

account. Mr. Cline personally contacted the claimant by telephone and offered the claimant the opportunity to return to his regular job and hours. Mr. Davidson declined, stating only that he had recently been "sick".

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Davidson refused to accept an offer of suitable work from his former employer.

Iowa Code § 96.5-3-b 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.

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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the

usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The evidence in the record establishes that Eric Cline d/b/a Cline Post Frame Construction Company made a bona fide job offer to Edward Davidson and that the claimant rejected the offer. The further employment offered by the employer was reasonably suitable and comparable to the work the claimant had recently performed for this employer. The offer of employment was also in the purview of the claimant's usual occupation. Mr. Cline testified during the hearing that Mr. Davidson had not previously quit employment with the company because of yelling or other improper treatment by Mr. Cline, but apparently left employment because he was dissatisfied by the delayed starting time on August 10, 2016.

Mr. Cline testified that he had not yelled at the claimant, berated him, or otherwise acted inappropriately, but had only mentioned that other crew members had worked hard the previous day. Mr. Cline further testified that he made no inappropriate statements to Mr. Davidson when communicating an offer of suitable work on January 9, 2017, and the claimant made no mention of any previous work problems when he refused the offer.

There being no evidence to the contrary, the administrative law judge concludes that the evidence does not establish the claimant refused the offer because conditions that caused him to quit in the past were still in existence. Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Edward Davidson refused an offer of suitable employment from Eric J. Cline's company. Accordingly, the claimant is disqualified from benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment insurance benefits in the amount of \$3,370.00 for the benefit weeks ending January 14, 2017 through March 18, 2017.

Iowa Code § 96.3(7) provides, in pertinent part:

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) (a) 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.

The \$3,370.00 in benefits the claimant has received constitutes an overpayment and the claimant is liable to repay that amount.

DECISION:

The agency representative's decision dated February 22, 2017, reference 02, is reversed. The claimant refused an offer of suitable employment from Eric J. Cline d/b/a Cline Post Frame Construction Company, a former employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant. The claimant is overpaid benefits in the amount of \$3,370.00 for the benefit weeks ending January 14, 2017 through March 18, 2017.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs