

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD WOLFE
Claimant

APPEAL NO: 10A-UI-01393-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHARD JACOBSON ET AL
Employer

OC: 01-04-09
Claimant: Appellant (1)

Section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 19, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 30, 2010. The claimant participated in the hearing with his ex-wife Lissa Birkenholtz. Frank Tursi, Operations Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The employer made an offer of work to the claimant on January 15, 2010. That offer included the following terms: A full-time temp to hire production position with Jeld-Wen Doors working first shift and earning \$10.39 per hour. The claimant's average weekly wage is \$288.95. The offer was made January 15, 2010, in the second week of unemployment. The claimant worked for Jacobson Industrial Services last assigned to Jeld-Wen Windows from July 27, 2009 to December 22, 2009, in a temp to hire position. He worked full-time as a warehouse employee on the first shift earning \$9.48 per hour. He was laid off December 22, 2009, due to a lack of work and filed an unemployment insurance claim with an effective date of January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse 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.

The offer was suitable as it was effectively the same job he previously held with Jeld-Wen Windows, just across the street with Jeld-Wen Doors, and met the wage, hours, and type of work requirements, and the claimant did not have a good-cause reason for the refusal as he was waiting to be recalled to Jeld-Wen Windows, for which there was no guarantee he would be recalled and if he was recalled, when he would be recalled. The employer testified that Jeld-Wen Windows recalls usually occur in June when its business picks up again due to the season although in this case the claimant was recalled at the end of January 2010. The employer testified that if employees take another position and then are recalled for permanent hire with another company they are expected to leave to accept the permanent position but are expected to accept other assignments in the meantime, otherwise they are not considered able and available for work. Consequently, benefits are denied.

DECISION:

The January 19, 2010, reference 04, decision is affirmed. The claimant did refuse a suitable offer of work. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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