

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARD K BELGARDE
Claimant

APPEAL NO. 10A-UI-06438-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

N L PARKISON TRUCKING INC
Employer

**OC: 02/14/10
Claimant: Respondent (1)**

Section 96.5-3-a – Recall for Suitable Work

STATEMENT OF THE CASE:

N. L. Parkison Trucking, Inc. filed a timely appeal from a representative's decision dated April 21, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits upon a finding that the claimant did not receive an actual offer of work on March 27, 2010. After due notice, a telephone conference hearing was held on June 18, 2010. The claimant participated personally. The employer participated by Rick Parkison, Rex Parkison, Brenda Parkison and Ms. Jean Campfield.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Leonard Belgarde was employed as a full-time driver for N. L. Parkison Trucking, Inc. until February 12, 2010 when he was laid off due to a lack of work.

On Saturday, March 27, 2010, the company's office manager attempted to contact Mr. Belgarde to recall him to his regular job. Although no direct contact was made with Mr. Belgarde, a message was left with Dianna Fickles, the claimant's significant other. The employer received no response from Mr. Belgarde. On March 30 and April 1, 2010, additional efforts were made by the company to contact Mr. Belgarde. Once again the employer was not able to directly contact Mr. Belgarde but left messages with Ms. Fickles or an answering machine. Because Ms. Fickles had in the past relayed dispatch instructions to Mr. Belgarde, the employer believed that Ms. Fickles was relaying the messages to return to work to the claimant. The employer did not attempt to notify the claimant of his recall to work by sending a certified letter but continued to rely upon Ms. Fickles or the claimant's answering machine to relay the message to the claimant.

Mr. Belgarde did not receive the messages to return to work and subsequently accepted employment with another company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that a bona fide offer of work was made to Mr. Belgarde by personal contact or by registered letter. It does not.

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 evidence in the record establishes that the employer in this matter made repeated attempts to contact Mr. Belgarde through Dianna Fickles, the claimant's significant other, who resided at the same location. The employer also attempted to leave messages on the claimant's answering machine. Ms. Fickles testified under oath that although she received some of the messages, she forgot to relay them to Mr. Belgarde. The claimant was thus unaware that an offer of recall to work had taken place. When the employer's initial efforts to recall the claimant through the use of an answering machine or leaving the message with another individual did not result in Mr. Belgarde contacting the company, the employer did not notify the claimant of his recall by certified letter to insure that the claimant was informed of the recall.

While the employer may surmise that Mr. Belgarde was receiving the messages but was choosing not to respond, the evidence in the record establishes that no direct contact was personally made with Mr. Belgarde and the employer did not comply with the provisions of 871 IAC 24.24(1)a by establishing personal contact through a registered letter. For these reasons the administrative law judge must conclude that a bona fide offer of work was not actually made to the claimant in a sufficient manner to personally inform him of an actual job opening. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 21, 2010, reference 01, is affirmed. No bona fide offer of work was made to the claimant on or about March 27, 2010. Claimant is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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