

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L WILL
Claimant

APPEAL NO: 07A-UI-05999-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DREAMS REALIZED LTD
Employer

OC: 03/25/07 R: 03
Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Larry L. Will (claimant) appealed a representative's June 11, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with an offer of work from Dreams Realized, Ltd. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2007. This appeal was consolidated for hearing with one related appeal, 07A-UI-06000-DT. The claimant participated in the hearing. Brad Sheren appeared on the employer's behalf. One other witness, Jack Willis, was available on behalf of the employer but did not testify. 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.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The claimant started working for the employer on or about April 15, 2006. He worked full time as a carpenter and remodeler of homes purchased by the employer for remodeling and then sale or rental. Initially, both the claimant and the employer understood that the claimant's position was as an independent contractor rather than an employee. He set his own hours and had no tax withholdings taken from his pay, which was set at the rate of \$13.00 per hour. His last day of work was on or about February 15, 2007. After that point at least until mid-April 2007 there was no work available for the claimant.

The claimant established an unemployment insurance benefit year effective March 25, 2007. It was determined at about that point that the claimant was in fact an employee for purposes of the state unemployment insurance program, and the employer paid its contributions to the Agency for the wages paid to the claimant at least since July 1, 2006. By statute, given the effective date of the claimant's filing, his base period was the fourth quarter 2005 through the third quarter 2006. In that base period, based upon wages reported from all employers, his highest wage quarter was the fourth quarter of 2005; and his average weekly wage for that quarter was \$784.12.

After some preliminary discussions beginning approximately April 10, 2007, the employer sent the claimant a certified letter of a recall to work effective April 23; the claimant received the letter on April 20. In the letter the employer offered an hourly wage of \$13.00; the hours would be set from 10:00 a.m. to 5:00 p.m., Monday through Friday plus every fourth Saturday, with a set lunch hour from 12:00 p.m. to 1:00 p.m., for approximately 36 hours per week. The letter indicated that if the claimant failed to report at 10:00 a.m. on April 23, the employer would deem that to be a refusal of the offer.

The claimant was concerned about the terms offered by the employer, including the imposition of the set work schedule, and consulted with a representative at the local Agency office. That person pointed out to the claimant that the rate of pay offered might not be suitable given the claimant's average gross weekly wage for his claim year's base period high quarter. As a result, the claimant determined to refuse the offer by not reporting as directed.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused 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 24.25(15)(i) provides:

24.24(15) *Suitable work*. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

While on the face of the matter it may appear anomalous that a \$13.00 per hour job offer could be deemed to be unsuitable when the most recent income the claimant had been receiving was \$13.00 per hour, the statutory definitions of suitability must prevail and override other views of "suitability." The statute clearly dictates that in order for work to be "suitable" the gross weekly wages for the work must equal or exceed set percentages of the individual's average weekly wage for the high quarter of his base period. The employer's offer of recall to the claimant was made during the claimant's fourth week after establishing his new claim for unemployment insurance benefits. Therefore, in order to "suitable," the offer must have provided the claimant with gross weekly wages of \$784.12 per week; the offer as made would have only provided the claimant gross weekly wages of \$468.00 (\$13.00 x 36 hours). As of the date of hearing in the 15th week of the claim, the gross weekly wages must be at least \$548.88. Even at the lowest level after the 18th week of the claim, the minimum gross weekly wage must be \$509.68.

While the claimant might choose for various reasons to accept employment below the minimum gross weekly wage, his refusal to accept such employment cannot be disqualifying. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's June 11, 2007 decision (reference 01) is reversed. The claimant did not refuse a suitable offer of 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/pjs