

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID M SPENCER
Claimant

APPEAL NO: 07A-UI-02988-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEONARD EXPRESS INC
Employer

OC: 02/25/07 R: 03
Claimant: Appellant (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

David M. Spencer (claimant) appealed a representative's March 21, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Leonard Express, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2007. The claimant participated in the hearing and was represented by Thomas Read, attorney at law. Scot Taylor appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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 recall for suitable work?

FINDINGS OF FACT:

The claimant started working for the employer on April 24, 2002. He worked full time as an over-the-road truck driver. His last day of work was February 21, 2007. On that date he returned his truck to the employer's home base in Cedar Rapids for needed extensive repair work. As a result, he was laid off for lack of work at least until such time as either his truck was repaired or a new truck would become available.

On February 28 the employer contacted the claimant and advised him that he could return to work driving another truck. The claimant was to come in to pick up the other truck on March 1. When the claimant came in to pick up the truck, the employer presented him with a "probationary agreement" it required him to sign as a condition of being allowed to return to work. The agreement specified:

- I. The truck that the driver operates will be regularly maintained and all documentation required by the driver will be available for examination by Leonard Express at their request.
- II. The truck will not receive any repairs or maintenance without prior approval from Eris and/or Scot.
- III. The truck will be parked at the terminal parking lot whenever it is in the area.
- IV. The truck will be expected in Cedar Rapids at least once a month for mechanical evaluation.

- V. Logs will be turned in on time (13 days from the date of the log) and in the correct format.
- VI. All parts the log will be correct, legible, and complete.

The agreement further specified that if there were any violation within six months, the claimant's employment could be terminated.

The claimant refused to sign the agreement, believing it to be unfair. As a result, he did not return to work with the employer. The employer imposed the probationary terms as the result of concerns that the claimant was not exercising proper care of the employer's equipment due to frequent on-road repairs that had been necessary and the claimant's failure to leave the truck at the terminal for necessary routine maintenance in the past. The claimant asserted that a consequence of signing the agreement would be the loss of his vacation seniority and being paid a lower mileage rate. The agreement is silent as to those being side consequences. Mr. Taylor, the director of operations, denied that those would be consequences of signing the agreement. The claimant relied primarily on rumor from other drivers that a probation might mean those other consequences.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of recall for 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.

871 IAC 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 section 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.

The offer of work was suitable for the claimant. The required probationary agreement was not unreasonable; the claimant did not establish good cause for refusing the work due to the required probationary agreement. Therefore, he refused an offer of recall for suitable work without good cause.

DECISION:

The representative's March 21, 2007 decision (reference 01) is affirmed. The claimant did refuse a suitable offer of recall to work without good cause. As of March 1, 2007, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw