

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HERBERT L QUIGLEY**  
Claimant

**APPEAL NO: 06A-UI-10142-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETERSON CONTRACTORS INC**  
Employer

**OC: 12/04/05 R: 03**  
**Claimant: Appellant (2)**

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

Herbert L. Quigley (claimant) appealed a representative's October 12, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with a potential offer of work with Peterson Contractors, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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 on September 7?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 22, 1990. He works seasonally as a heavy equipment operator in the employer's road construction business. The claimant had established an unemployment insurance benefit year effective December 4, 2005 during a seasonal layoff. He filed an additional claim effective September 3, 2006.

On September 5 the claimant was informed it was too wet to work with the equipment he had. He reported in for work on September 6 but was sent home at about noon because it was still too wet. On September 7 the job supervisor was going to have the claimant work on a job to do tiling, a job the claimant did not normally do, with a foreman with whom the employer knew the claimant had problems; when the claimant reminded the supervisor that he was not supposed to work with that foreman, the supervisor sent him to a bridge job, but upon arrival the claimant learned that the crew on that job had been sent home because it was too wet. The job supervisor then referred the claimant to a higher manager who told him that he would be called when there was work.

The claimant concluded he was temporarily laid off pending recall. In late September and early October the claimant had some days he was unable to work due to health reasons, which has separately been addressed in a different representative's decision. After making contacts with the employer regarding returning to work, he ultimately returned to work as of October 12.

### **REASONING AND CONCLUSIONS OF LAW:**

The claimant would be ineligible to receive unemployment insurance benefits if he refused an offer of suitable without good cause.

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.

To the extent the claimant's declining to do work he did not normally do with the foreman with whom it had previously been arranged that he would not work is considered to be a "refusal" of work, the claimant's refusal was with good cause. Therefore, no disqualification is imposed. 871 IAC 24.24(3).

**DECISION:**

The representative's October 12, 2006 decision (reference 01) is reversed. The claimant did not refuse a suitable offer of work without good cause. 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