

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN D RODRIGUEZ
Claimant

APPEAL NO. 13A-UI-10879-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POOL & SPA CONCEPTS LLC
Employer

OC: 11/25/12
Claimant: Appellant (2)

Section 96.5(3)a – Refusal of Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Jordan Rodriguez, filed an appeal from a decision dated May 21, 2013, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 21, 2013. The claimant participated on his own behalf. The employer, Pool and Spa Concepts, participated by Co-Owners Don Snyder and Jeri Snyder. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant refused an offer of work.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on May 21, 2013. The claimant stated he never received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 31, 2013. The appeal was not filed until September 23, 2013, which is after the date noticed on the decision. He filed the appeal after receiving a second decision of September 16, 2013, which found him overpaid.

The employer stated it made several attempts to contact the claimant by phone and by mail on or about February 18, 2013 for a recall to work. The phone number he had provided did not work as it had been disconnected and Mr. Rodriguez stated he never received the letter and it was not sent by registered mail.

Work was available to him in mid-February 2013 to set up and tear down the display at a home show but as it was not possible for the employer to contact him, the offer was never actually made.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant maintained he never received the decision on May 21, 2013 to know he had been disqualified. The appeal was only made after the receipt of the overpayment decision and the appeal shall therefore be accepted as timely.

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(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.

There was no actual offer of work on or about February 18, 2013, as the employer was not able to reach the claimant by phone or by mail. The employer did not send the letter of recall by registered mail and therefore cannot be tracked or considered a bona fide offer under the provisions of the above Administrative Code section.

DECISION:

The decision of the representative dated May 21, 2013, reference 03, is reversed. The appeal shall be accepted as timely. Jordan Rodriguez is qualified for benefits as no bona fide offer of work was made by the employer for the recall.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs