

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS L ROSEBERRY
Claimant

PRECISION UTILITIES GROUP INC
Employer

APPEAL 20A-UI-01875-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant/appellant, Travis L. Roseberry, filed an appeal from the February 20, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits, concluding the claimant failed to accept a suitable offer of work. The parties were properly notified about the hearing. A telephone hearing was held on March 18, 2020. The claimant participated personally. The employer, Precision Utilities Group Inc., participated through Amanda Trice, human resources. Caitlin Fisher also testified.

The administrative law judge took official notice of the administrative records. Claimant Exhibit A was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a I&R technician and was separated from employment on December 15, 2019, when he was laid off of work. The claimant’s current group code is “3”, representing that he is currently temporarily unemployed. As a result, he has not been required to make weekly job search contacts.

The claimant established a claim for unemployment insurance benefits with an effective date of December 15, 2019. On January 23, 2020, the employer sent the claimant an email. The email stated there were jobs in Vermont and New Hampshire, and the claimant should call the employer to discuss. The email contained a rate sheet attached which outlined pay for the positions. The email did not state a start date, which town or city in Vermont or New Hampshire, any details of the position, such as the length of the assignment. The claimant did

not respond to the email. The employer reported the claimant failed to accept a suitable offer of work, thereby triggering the February 20, 2020 decision.

The claimant did not discover the email, which went to his junk box, until the decision. The employer made no contact with the claimant about the offer until after learning he appealed the initial decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(14)(a) 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.

Iowa Admin. Code r. 871-24.24(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.

Where the claimant actually refuses work, as opposed to not applying for work, the refusal of suitable work question involves whether the work was "suitable" and, if so, whether the refusal was for "good cause". In *Pohlman v. Ertl Co.*, 374 N.W.2d 253 (Iowa 1985) the Supreme Court placed the burden of proof on good cause on the claimant. Subsequently in *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904, 910 (Iowa 1987) the Court ruled that the employer had the burden of proving suitability of the offer. On the issue of suitability, the Employer has a burden of putting on a *prima facie* case. The Claimant has a burden to identify the suitability factors at issue, at least as to some of them. *Norland v. IDJS*, 412 N.W.2d 904, 911 (Iowa 1987). If the employer proves that a suitable offer was made and refused, then the claimant can avoid disqualification by showing that the refusal was for good cause. Suitability of an offer is a fact issue that must be resolved "in light of those facts peculiar to each given case." *Norland v. IDJS*, 412 N.W.2d 904, 912 (Iowa 1987). "The question of good cause, like that of suitability, is a fact issue within the discretion of the department to decide." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, the administrative law judge concludes no valid offer of work was extended to the claimant. The employer sent an email on January 23, 2020 which did not contain sufficient evidence of an offer, such as a start date, details of the assignment the length or location. No follow up personal contact was made by the employer until the claimant filed an appeal to the decision denying him benefits. Accordingly, the administrative law judge concludes that no bona fide offer of work was extended to the claimant. Benefits are allowed, provided he is otherwise eligible.

The issues of whether the claimant is still temporarily unemployed and whether his group code should be modified to include work searches are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The unemployment insurance decision dated February 20, 2020, (reference 01) is reversed. No valid offer of work was made to the claimant. Benefits are allowed, provided he is otherwise eligible.

REMAND: The issues of whether the claimant is still temporarily unemployed and whether his group code should be modified to include work searches are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Jennifer L. Beckman
Administrative Law Judge
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March 27, 2020
Decision Dated and Mailed

jlb/scn