

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREGORY M BENSON
Claimant

MACKE GOWRIE INC
Employer

APPEAL 17A-UI-01363-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/08/17
Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer filed an appeal from the January 30, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon an offer of work. The parties were properly notified about the hearing. A telephone hearing was held on February 28, 2017. Claimant participated. Employer participated through new car sales manager Marc Melody and marketing manager Lude Anstoeter. Claimant's Exhibit A was received.

ISSUE:

Did 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: Claimant was employed as a full-time car salesperson from December 2013, through January 6, 2017. On November 28, 2016, the business owner Gus told employees that the Gowrie, Iowa location was closing at the end of the year and the employer would offer a position at the Lake City, Iowa location about 25 miles away. On December 29, 2016, claimant spoke to Anstoeter about work at the Lake City location. Claimant was paid \$750.00 per week plus commission in Gowrie with no requirements that he sell financing or xzylon car paint coating. The offer in Lake City would pay \$500.00 per week only if he sold 65 percent of vehicles with employer financing and 20 percent of cars with the paint coating. Claimant declined because of the change in terms, the increased commuting distance, and he had concerns about the accuracy of payments while working in Gowrie. While claimant had previously worked for the employer in Lake City, it was only for training and during store remodeling. He stayed to work until he completed delivery of six cars in Gowrie through the first week of January 2017. All business activity at the Gowrie location ceased on January 21, 2017.

On January 6, 2017, claimant and Anstoeter spoke and claimant declined the offer again. Claimant did mention retiring but after meeting with the SSA, he has not taken action. Claimant was also upset that the employer cancelled his health insurance (the employer's contribution towards the policy was \$200.00 per month) effective January 3, 2017, without notice of cancellation or continuation options to claimant.

The fact-finding interview regarding the unemployment insurance benefits claim was held on January 27, 2017, and the decision was issued on January 30, 2017. The employer made a written job offer by certified mail on February 6, 2017, outlining a base salary of \$39,000 per year, \$300.00 per month vehicle stipend and 25 percent gross profit commission. The financing and xzylon requirements were removed. The offer language would allow change in these terms at will. Claimant did not respond as he was not interested because of the terms-change language and his distrust of the employer after the health insurance cancellation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the November and December 2016, offers were outside the benefit year, and the claimant presented a good reason for having failed to accept an offer of work in February 2017.

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. (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 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.

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit

year, as defined in subrule 24.1(21), before the Iowa Code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

(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 administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. As to the February 6, 2017, offer, the claimant continued to decline work due to reasonable trust issues related to changes to compensation terms and the health insurance cancellation without notice.

DECISION:

The January 30, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant failed to accept an offer of work made outside of his benefit year in November and December 2016; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Claimant has presented good cause for failing to accept the February 6, 2017, offer. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs

NOTE TO EMPLOYER:

If you wish to change the mailing address of record, please access your account at: <https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>