

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHARLES K WISHMEIER
Claimant

PIGOTT INC
Employer

APPEAL 17A-UI-07086-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/11/17
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 6, 2017, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 28, 2017. The claimant registered a phone number with the Appeals Bureau but was unavailable when called. Human Resources Manager, Kathy Schnack, testified for the employer. Department Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed with this employer as an account installation manager from May 29, 2015 through June 12, 2017. On June 7, 2017, he was informed that his position was being eliminated and at the same time, the employer offered the claimant a demotion. The claimant was offered a new position as a lead installer, with same hours and a \$4.37 per hour pay cut. The claimant declined the position. The communication of the demotion was communicated by Kathy Schnack, verbally. The claimant did not have a valid claim for unemployment insurance benefits at the time. The claimant established his claim with an effective date of June 11, 2017.

The administrative records reflect that when the employer responded to the initial notice of claim, it stated the claimant had refused an offer of work, but then supplemented the response with details regarding his separation. The claimant's permanent separation on June 12, 2017 has not yet been determined at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept an offer of work made outside of his benefit year.

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(8) provides:

(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.

The claimant declined an offer of work (which was actually a demotion) communicated to him on June 7, 2017. The claimant did not have a valid claim for unemployment insurance benefits until June 11, 2017. Therefore, 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. Benefits are allowed.

DECISION:

The July 6, 2017, (reference 01) decision is affirmed. The claimant failed to accept an offer of work made outside of his benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The issue of the claimant's June 12, 2017 separation with this employer is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn