

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES W STEVENS**  
Claimant

**APPEAL NO. 12A-UI-01151-SWT**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**L A LEASING INC**  
Employer

**OC: 11/13/11  
Claimant: Respondent (2-R)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 19, 2012, reference 05, that concluded the claimant was not disqualified for refusing work. A telephone hearing was held on February 27, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing as he was not available at the number he had provided for the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Shelby Kingery.

**ISSUES:**

Should the hearing be reopened?

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment as an installation and maintenance repair worker at Clinton Engineering from August 11 to November 10, 2011. His rate of pay was \$30.00 per hour. He finished the assignment and the employer did not have immediate work for him so he filed for unemployment insurance benefits effective November 13, 2011. His weekly benefit amount was \$192.00. His average weekly wage based on the highest quarter of wages in his base period was \$340.28.

On December 12, 2011, the claimant was offered a job as a machine operator with Custom Pak. The job was full time at a rate of pay of \$10.00 per hour and could have led to a permanent employment. The wage offered is comparable to going rate of pay for similar work in the local area.

The claimant submitted to the pre-employment drug test on December 12 and attended orientation on December 13. The claimant failed to accept the job by not reporting to work and by not contacting the employer regarding his decision.

The claimant filed for and received a total of \$2,496.00 in unemployment insurance benefits for the weeks between December 11, 2011, and March 10, 2012.

The claimant was called at the time of the hearing but did not answer the phone. He called in at approximately 3:17 p.m. on the afternoon of the hearing. He explained that he knew he had a hearing but had left his phone at his friend's house the night before and his friend lived an hour and half away. He did not get his phone back until the afternoon of February 27, 2012.

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

The first issue is whether the hearing should be reopened based on the reasons why the claimant was not available for the hearing.

The unemployment insurance rules provide that when a party who has received due notice is unable to attend a hearing or request postponement within the prescribed time due to emergency or other good cause, the presiding officer may, if no decision has been issued, reopen the record and schedule another hearing. The rules further provide that a request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals after the presiding officer has issued a final decision in the case. 871 IAC 26.8(4).

The claimant has not shown there was an emergency or other good cause for his failure to attend the hearing. Since the claimant knew he had a hearing, he should have borrowed someone's phone and called in and provide the new phone number to participate.

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work 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....

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.

The evidence establishes the claimant refused an offer of suitable work without good cause. The work offered would have paid \$400.00 per week, which is well over 100 percent of his average weekly wage of \$340.28. The evidence fails to establish good cause for the accepting the work offered.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**NUNC PRO TUNC DECISION:**

The unemployment insurance decision dated January 19, 2012, reference 05, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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