

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E BARBER
Claimant

APPEAL NO. 10A-UI-07933-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCCLAIN AND CO INC
Employer

OC: 01/10/10
Claimant: Appellant (2)

Section 96.5(3)(a) – Refusal of Suitable Work
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Donald Barber filed a timely appeal from the May 25, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 19, 2010. Mr. Barber participated. Trish Rose, Office Manager, represented the employer and presented additional testimony through Ken Huntley, Superintendent. Exhibit One was received into evidence.

ISSUES:

Whether the claimant refused to accept a suitable offer of employment without good cause.

Whether the claimant has been able to work and available for work since April 14, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer notified Mr. Barber at the end of November 2009 that he was laid off until the following spring. Mr. Barber had performed work for the employer as a full-time truck driver/laborer. On April 13, 2010, the employer recalled Mr. Barber to the employment by means of personal contact, but conditioned his return to the employment on his submission to a drug test. Mr. Barber agreed to the drug testing. Mr. Barber performed work for the employer without pay on April 13, 2010. The employer would not return Mr. Barber to the payroll absent the negative drug test, but advised Mr. Barber that it would “bank” his hours. On April 14, 2010, Mr. Barber provided a urine specimen for testing. The specimen tested negative for controlled substances.

On April 14, Trish Rose, Office Manager, notified Mr. Barber that his return to the employment would be treated as a new hire. This included the requirement that Mr. Barber complete a new application for employment. More importantly, it meant that Mr. Barber would have to wait a year before he would be eligible for insurance. Mr. Barber elected not to return to the employment, rather than to return under this significant change in the conditions of his employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant who refuses an offer of suitable employment without good cause is disqualified for benefits until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. See Iowa Code section 96.5(3).

The weight of the evidence indicates that Mr. Barber did have good cause for refusing this particular offer of employment. The good cause was based on the employer's decision to change the conditions of the employment to deny insurance coverage for a year. Mr. Barber's refusal to return to the employment under the changed conditions would not disqualify him for unemployment insurance benefits. See 871 IAC 24.26(1). The employer's account may be charged.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Despite Mr. Barber's refusal of this particular offer of employment for good cause, the weight of the evidence indicates that Mr. Barber had otherwise made himself available for work and has sought new employment within a 50-mile radius of Waterloo. Mr. Barber is eligible for benefits, provided he is otherwise eligible for benefits.

DECISION:

The Agency representative's decision dated May 25, 2010, reference 02, is reversed. The claimant refused an offer of employment from the employer for good cause. The claimant is able and available for work. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw