

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID A WHITAKER
Claimant

T A BAUER INC
Employer

APPEAL 16A-UI-08419-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 20, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a work refusal. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2016. Claimant participated. Employer participated through owner Timothy Bauer.

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 FedEx contract route driver. April 12 was his last day of work because he had an accident and FedEx required that he be placed on a 60-day disciplinary suspension. He was told to return to work on June 15, 2016. On April 15 Bauer called and spoke to claimant to let him know he could get unemployment insurance benefits while he served his 60-day suspension. He told him to return on June 15 to take a driving test, fill out paperwork and to keep in touch. On June 23 claimant called to ask if he could have his job back. Bauer said he could have returned on June 15 but he could return on June 27 but it would not be the same route. On June 24 Bauer left him messages that he could report that day for paperwork and a drug test, and start work right away. There was no response or further communication and claimant did not report on June 27 either.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant refused a recall to work at the conclusion of the disciplinary suspension.

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. 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.

The notice to return to work at the conclusion of the disciplinary suspension was suitable as was the offer to return to the employment on June 23 and claimant did not have a good cause reason for the failure to accept it. A more suitable alternative analysis is that claimant quit when he failed to return to work at the conclusion of the disciplinary suspension on June 15, 2016. See, Iowa Code § 96.5(1).

DECISION:

The July 20, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant failed to return to work at the conclusion of the disciplinary suspension and failed to accept a suitable offer of work on June 23, 2016. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs