

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MATHEW A SMITH
Claimant

FLAGGER PROS USA LLC
Employer

APPEAL 15R-UI-01520-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/09/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 9, 2014, (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 3, 2015. Claimant participated. Employer participated through dispatcher and human resources assistant Kaleena Middendors.

ISSUES:

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 heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: He filed a claim for unemployment insurance benefits effective November 9, 2014. Employer made an offer of work to claimant on September 15, and October 31, 2014, before the effective date of his claim. The employer attempted to reach him on November 12 and November 13, 2014, but got a message the phone was disconnected so considered him separated from employment. (See, 15A-UI-00676-DT)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offers were made outside of the benefit year.

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. 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.

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.

Iowa Code § 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".

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, provided he is otherwise eligible. The next contact by the employer was within the benefit year. If employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. Since no offer of work was actually made during the benefit year, benefits are allowed. The claimant has established his availability for work during the claim year.

DECISION:

The December 9, 2014, (reference 02) unemployment insurance decision is affirmed. Employer did not communicate an offer of work to claimant during the benefit year thus; the administrative law judge has no jurisdiction. Claimant is available for work. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs