

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATHEW J SCANLON
Claimant

APPEAL NO. 07A-UI-00519-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN CONCRETE PUMPING INC
Employer

OC: 02-19-06 R: 03
Claimant: Respondent (1)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 10, 2007, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on January 10, 2007. The claimant did participate. The employer did participate through Ray Philipppson, Owner/President and Tonya Hawker, Secretary.

ISSUE:

Did the claimant refuse a suitable offer of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a laborer fulltime beginning first on February 26, 2004 through May 23, 2005 and then again on July 25, 2005 through December 21, 2006 when he was discharged.

There was no offer of work made to the claimant on December 12, because he was still employed by the employer. An offer of work made to the claimant on or about January 5, 2007 was not accepted by the claimant because he had obtained other work that paid more money, with better benefits from a different employer. The claimant is currently employed by another employer even though he is presently laid off during the winter months.

REASONING AND CONCLUSIONS OF LAW:

The employer did not make an offer of work to the claimant on December 12, 2006. An offer of work made later, during the fact-finding interview was refused because the claimant had already obtained employment with better pay and better benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

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.

871 IAC 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

No offer was made on December 12, 2006, so there was no offer for the claimant to consider even turning down at that time. The claimant was not obligated to even consider the offer made

during the fact-finding interview because he had already accepted employment from another employer. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 10, 2007, reference 04, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css