

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SCOTT E PATTERSON
2826 LAKE RD
OTTUMWA IA 52501

THOMAS VETERINARY CLINIC
JOHN L THOMAS D.V.M.
RR 4
OTTUMWA IA 52501

Appeal Number: 06A-UI-04050-DT
OC: 01/15/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Thomas Veterinary Clinic (employer) appealed a representative's April 3, 2006 decision (reference 01) that concluded Scott E. Patterson (claimant) was qualified to receive unemployment insurance benefits. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 11:00 a.m. on May 1, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on April 19, 2006, and indicated that Dr. John Thomas, D.V.M. would be available at the scheduled time for the hearing at a telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, Dr. Thomas was not available. Therefore, the employer did not participate in the hearing. The administrative law judge considered the record closed at

11:10 a.m. At 11:23 a.m., Dr. Thomas called the Appeals Section and requested that the record be reopened. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Did the claimant refuse a offer of suitable work without good cause?

FINDINGS OF FACT:

The employer received the hearing notice prior to the May 1, 2006 hearing. The instructions inform the parties that they are to be available at the scheduled day and time for the hearing, and if the party is not available, the administrative law judge may proceed and make a decision on other available information. The employer's witness did not recontact the Appeals Section to seek to participate in the hearing until 23 minutes after the scheduled start time for the hearing. The employer had mistakenly believed that the hearing was for about 8:15 a.m. the morning of May 1, and when the call did not come, he had gone about other business rather than contact the Appeals Section to inquire about the scheduled hearing; as far as desiring an earlier hearing time, the employer had not attempted to reschedule the hearing from its originally scheduled 11:00 a.m. time.

The claimant started working for the employer on or about September 1, 1994. His last day of work was on or about December 2, 2005. The claimant had a pattern of making claims for unemployment insurance benefits going back to at least 2004 where he claimed and received unemployment insurance benefits from approximately the end of November through approximately the first of April of the next year. The claimant again established an unemployment insurance benefit year effective January 16, 2005, claimed and received benefits through the week ending March 26, 2005, and reopened that claim with an additional claim effective December 4, 2005. He made weekly claims through the end of his benefit year as of January 15, 2006, and then established a new unemployment insurance benefit year effective January 15, 2006.

The employer asserted that the claimant had been "offered his job back," but provided no explanation as to how or when an actual contact was made with the claimant to recall him to work. Rather, the employer asserted that there had been communication only through a third party that the claimant intended to return to work, but that the employer "was not able to contact (the claimant) for work" when he was needed at work, and that attempts made to find the claimant at his home on numerous occasions resulted only "to find (he) is not present."

The claimant has ceased filing weekly claims for unemployment insurance benefits as of the week ending April 8, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the hearing record should be reopened.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) 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 upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

Although the employer intended to participate in the hearing, the employer failed to read or follow the hearing notice instructions and was not available at the specified time for the hearing. The rules specifically state that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7). The employer did not establish good cause to reopen the hearing. Therefore, the employer's request to reopen the hearing is denied.

The next issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code section 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(1)a provides:

- (1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

In this case, there was no bona fide offer of work and no definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 3, 2006 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/kkf