

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLAN L DIGMANN
Claimant

APPEAL NO. 13A-UI-06387-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCAULIFFE EXCAVATING INC
Employer

**OC: 11/11/12
Claimant: Respondent (1)**

Section 96.5(3) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2013, reference 01, decision that allowed benefits based on a conclusion that the claimant had good cause to refuse an offer of work on April 5, 2013 based on the distance to the jobsite. After due notice was issued, a hearing was held on July 15, 2013. Claimant was not available at the number he had provided for the hearing and did not participate. Jeff McAuliffe represented the employer. Union representative Nick Norton also testified.

ISSUE:

Whether the claimant refused an offer of suitable work on April 4-5, 2013 without good cause.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for the employer as a heavy equipment operator. The employer laid off the claimant in November 2012. On or About April 4-5, 2013, the employer contacted the claimant to discuss a possible work assignment in Lansing, Iowa. The claimant lived in Worthington. The previous job sites had all been within 30 mile of Dubuque. The job in Lansing would require the claimant to drive two to two and a half hours round trip to the job site each day. This would be a 20 to 30 mile increase, each way, over the claimant's usual commute to the employer's shop in Dubuque. The employer was willing to provide a vehicle for the claimant to get to the job site, the employer declined to compensate the claimant for the time two or more hours he would have to spend commuting to and from the job site. The claimant indicated he was not interested in the proposed job assignment in Lansing. As it turned out, there was no job because weather prevented work at the job site. As of the July 15, 2013 hearing, work had still not commenced at the Lansing job site due to the weather.

The claimant was receiving unemployment insurance benefits at the time the proposed job assignment was discussed.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 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 ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... 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 job to offer in April 2013, and therefore no bona fide offer of employment. For that reason, the claimant could not have refused an offer of employment, since there was no actual employment. Even if there had been suitable work, the increased commuting distance, up to an extra hour each day, provided good cause for the claimant to refuse the assignment. The purported work refusal on or about April 4-5, 2013 would not disqualify the claimant for benefits and would not relieve the employer of liability for benefits.

DECISION:

The Agency representative's May 22, 2013, reference 01, is affirmed. There was no bona fide job on or about April 4-5, 2013 and, therefore, no refusal. The April 2013 contact between the employer and the claimant would not disqualify the claimant for benefits or relieve the employer of liability for benefits. 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/pjs