

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH F FINZEL
Claimant

APPEAL NO. 13A-UI-06880-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 05/12/13
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 5, 2013, reference 01, that concluded the claimant was not disqualified based on failing to accept work offered on May 17, 2013. A telephone hearing was held on July 12, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Chad Baker participated in the hearing on behalf of the employer with a witness, Joe Vermeulen.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment at Webber Metals as a CNC operator from October 20, 2011, through January 15, 2013, when he completed his assignment.

In May 2013, the claimant contacted a manager at Webber Metals to see if he could be hired as an employee of Webber Metals. The manager informed him that he preferred having him work through the employer.

On May 16, 2013, the claimant was called by Joe Vermeulen, the branch manager, offering him a full-time job at Webber Metals at a rate of pay of \$12 per hour. The job was to start on May 20. The claimant told Vermeulen that he was interested in the job. Vermeulen told him that he needed to come in on the afternoon of May 17 to complete a required drug test.

The claimant was in the process of picking his daughters up in Michigan because he has custody over the summer months. He was delayed returning from Michigan because the serpentine belt on his car broke. He got the car fixed and expected to get to Sedona before the office closed at 5 p.m. to take the drug test. Vermeulen called the claimant around 4 p.m. and

asked if he still planned to come in for the drug test. The claimant explained his delay and said he would be there before 5 p.m. Vermeulen told him that he could not take the drug test after 4 p.m. because if he tested positive, he would have to go to the clinic for secondary testing, which ended at 4 p.m. Vermeulen contacted Webber Metals and told a manager what had happened. The manager told Vermeulen to withdraw the offer of work to the claimant. The claimant was not given the chance to take a drug test at a later time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

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.

In this case, the offer of work was withdrawn by Webber Metals, the claimant never refused the offer of work. I further conclude that the delay in returning to the Dubuque area was due to something beyond the claimant's control. He could not have predicted that the serpentine belt would break on his car. No disqualification should be issued in this case. The claimant has been able to and available for work and actively looking for work as shown by his efforts to get on with Webber Metals and the fact that he is currently employed.

DECISION:

The unemployment insurance decision dated June 5, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs