

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L ALLEN
Claimant

APPEAL NO. 07A-UI-03394-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANK BAXTER GENERAL CONTRACTOR
Employer

OC: 02/25/07 R: 03
Claimant: Respondent (1)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Frank Baxter General Contractor (Baxter), filed an appeal from a decision dated March 26, 2007, reference 02. The decision allowed benefits to the claimant, Matthew Allen. After due notice was issued a hearing was held by telephone conference call on April 18, 2007. The claimant participated on his own behalf. The employer participated by Superintendent Jeff Engle and Supervisor Bob Moore.

ISSUE:

The issue is whether the claimant refused an offer of work.

FINDINGS OF FACT:

Matthew Allen was an employee of Baxter who was working at a job site in Riverside, Iowa. He car-pooled with two other employees, Roosevelt and Germaine Gary, and the employer did use Roosevelt Gary's phone number to contact the claimant. On Tuesday, February 27, 2007, Superintendent Jeff Engle told these three employees they would be working in Burlington, Iowa, starting the next day. However, later that night Mr. Engle called Mr. Gary to say they were all being laid off instead.

The employer contacted Mr. Gary on February 28, 2007, to notify him and Mr. Allen they should start in Burlington, Iowa, the next day. However, this information does not appear to have been relayed to Mr. Allen by Mr. Gary. On March 2, 2007, Mr. Gary informed Mr. Moore that he was "selling his tools" and would be filing for unemployment.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer did not make direct, personal contact with the claimant to either offer him the job or to be informed that he was refusing. It appears the information was not relayed from Mr. Gary to Mr. Allen and the claimant cannot therefore be responsible for refusing a job he did not know was available. As there was no direct contact between claimant and employer for the job offer, it does not comply with the provisions of the above Administrative Code section and disqualification may not be imposed.

DECISION:

The representative's decision of March 26, 2007, reference 02, is affirmed. Matthew Allen is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs