

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRUCE J ARMSTRONG**  
Claimant

**APPEAL NO. 10A-UI-01924-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**“MIKE MCMURRIN TRUCKING INC  
“MCMURRIN TRUCKING**  
Employer

**OC: 01/03/10  
Claimant: Appellant (4)**

Section 96.5-3-a – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Bruce Armstrong filed a timely appeal from a representative's decision dated February 2, 2010, reference 01, which denied benefits effective January 3, 2010 upon a finding that the claimant refused a recall to suitable work with Mike McMurrin Trucking on January 3, 2010. After due notice, a telephone conference hearing was conducted on March 18, 2010. The claimant participated personally. The employer participated by Mike McMurrin, Company Owner, and Mr. Mike Sturtz, Operations Manager. The hearing was reconvened on March 19, 2010 to take additional evidence. Notice was waived by both the claimant and the employer. Participating was the claimant, Mr. Bruce Armstrong, and Mike McMurrin, Company Owner.

**ISSUE:**

The issue is whether the claimant refused a recall to suitable work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Bruce Armstrong was employed by Mike McMurrin Trucking as a full-time dump truck driver until being laid off from work on December 12, 2009.

Prior to being laid off the claimant and other drivers were informed of a potential recall to work later in December 2009. On December 28, 2009, the company operations manager, Mr. Sturtz, attempted on three occasions to contact Mr. Armstrong to recall him to his regular job and pay. Mr. Armstrong did not respond to the messages.

Mr. Armstrong opened an unemployment insurance claim effective January 3, 2010. On January 14, 2010, Mike McMurrin, the company owner, personally spoke with Mr. Armstrong and at that time attempted to recall the claimant to work. The claimant indicated that he had not been feeling well during the later part of December 2009. Mr. Armstrong, however, did not respond to the recall on January 14, 2010.

It was Mr. Armstrong's belief that the employer would recall other drivers who resided closer to the company's Cedar Rapids, Iowa facility before recalling Mr. Armstrong to work, as the claimant resides an extended distance from the employer's facility and has reservations about wintertime travel.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a recall to suitable work on December 28, 2009 but did refuse a recall to suitable work on January 14, 2010.

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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The claimant's refusal to a recall to suitable work on December 28, 2009 did not occur within Mr. Armstrong's benefit year, therefore, a disqualification for unemployment insurance benefits cannot be imposed.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge concludes based upon the evidence in the record that a recall to suitable work took place on January 14, 2010 when the company owner, Mr. McMurrin, personally spoke with Mr. Armstrong and attempted to recall him to available work performing the same duties at the agreed upon rate of hourly pay. The offer was suitable as it met the wage requirements and the job duties were the same as the job that Mr. Armstrong regularly performed for Mike McMurrin Trucking. The claimant did not have a good cause reason for the refusal. The claimant is subject to a benefit disqualification based upon his January 14, 2010 refusal. Benefits are withheld for the week ending January 23, 2010 until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount.

**DECISION:**

The representative's decision dated February 2, 2010, reference 01, is affirmed as modified. Claimant refused a recall to suitable work January 14, 2010. The claimant is disqualified from unemployment insurance benefits for the week January 23, 2010 until he has worked in and been paid wages for insured equal to ten times his weekly benefit amount, providing that he meets all other eligibility requirements.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

pjs/pjs