

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL STROUGH
Claimant

APPEAL NO: 14A-UI-13484-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLAY COUNTY IA
Employer

OC: 11/30/14
Claimant: Respondent (1)

Section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 24, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 27, 2014. The claimant participated in the hearing. Kristi Kuester, Assistant Clay County Attorney, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The claimant was hired as a part-time seasonal conservation employee September 17, 2012. He was allowed to work 1,500 hours per year and consequently his job ended December 23, 2013.

The claimant worked for a factory in Spencer from the end of February 2014 through April 2014, while waiting to be recalled by Clay County. When that did not occur he was offered and accepted a position with the Iowa Department of Natural Resources (DNR). Dennis Mason, of the DNR, shared an office with the claimant's former supervisor Dan Heissel, Executive Director of the Clay County Conservation Board. Consequently, Mr. Heissel had already learned the claimant had accepted a position with the DNR before the claimant saw Mr. Heissel at Mr. Heissel's daughter's high school graduation May 10, 2014. He told Mr. Heissel he accepted a position with the DNR to start April 28, 2014 and would not be returning to the county position. He also told Mr. Heissel the DNR job ran through June 30, 2014, when the state fiscal year ended because he was only allowed to work 780 hours and would be available to work for the county again if needed. In July 2014, however, the DNR extended the claimant's position by another 780 hours and he worked through November 20, 2014. The claimant filed a claim for benefits with an effective date of November 30, 2014.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

Iowa Code § 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 re-qualified. 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.

Iowa Admin. Code r. 871-24.24(1)a, (7), and (8) 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.

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

(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 administrative law judge does not have jurisdiction to evaluate the offer or refusal of work, since the offer of employment took place outside of the claimant's unemployment benefit year. In order for the administrative law judge to evaluate the potential offer of work, the claimant must have a claim for unemployment benefits at the time. The issues surrounding the claimant's return to work for the county occurred in the spring of 2014. The claimant did not have a claim for benefits at that time as he did not file his first claim until November 30, 2014; after his job with the state DNR ended November 20, 2014.

Even if he had a claim for benefits at the time the employer wanted him to return to his job with the county, the employer did not make a bona fide offer of work to the claimant because it never contacted him to offer him work either through a phone call where it actually talked to the claimant and gave him a date of return or through a registered letter. For the above-stated reasons the administrative law judge must conclude the claimant did not refuse a suitable offer or work. Therefore, benefits are allowed.

The claimant has re-qualified for benefits since his separation from this employer.

DECISION:

The December 24, 2014, reference 01, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible. The claimant has re-qualified for benefits since his separation from this employer.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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