

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE M DEAN
Claimant

APPEAL NO. 08A-UI-00090-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA LAWN & HOME CARE INC
Employer

OC: 11/11/07 R: 02
Claimant: Respondent (2-R)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Central Iowa Lawn & Home Care (employer) appealed a representative's December 24, 2007 decision (reference 02) that concluded Shane Dean (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 16, 2008. The claimant participated personally. The employer participated by Marcia Hofsommer, Office/Personnel Manager, and Dean Hofsommer, President/Co-owner.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 19, 2007, as a full-time crew member. At the time he was hired, the claimant understood that he would be performing lawn care and snow removal work. The employer clearly explained to the claimant that he had to appear for work during adverse winter weather so the employer could perform the work for which it contracted to do with various businesses. The claimant agreed to this even though he lived more than 20 miles from the employer's base operation. Many employees lived in surrounding towns and had to drive some distance to work.

The claimant was on medical restrictions from October 23 through November 12, 2007. On November 14, 2007, the employer laid the claimant off for lack of work.

On December 1, 2007, the employer asked the claimant to return to work and perform snow removal. The claimant thought the roads were too slick and refused to return to work that day. He did not offer to return to work any other day after that.

In anticipation of the hearing, on January 3, 2008, the employer offered the claimant a janitorial position paying \$9.00 per hour. The claimant refused the offer of work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant refused an offer of suitable work.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The claimant was offered work by a former employer. That work was within the claimant's usual occupation. The claimant did not previously quit work with this employer. When work is offered by a previous employer, the work is the usual for the claimant, and the claimant did not previously quit working for the employer, the claimant's refusal of work is a disqualifying event. The claimant is not eligible to receive unemployment insurance benefits, because he refused an offer of suitable work.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing the claim herein. Pursuant to this decision, those benefits now constitute an overpayment that must be repaid.

The issue of the refusal of suitable work on January 3, 2008, is remanded for determination.

DECISION:

The representative's December 24, 2007 decision (reference 02) is reversed. The claimant refused an offer of suitable work. The claimant is not eligible to receive unemployment insurance benefits after December 1, 2007. The claimant is overpaid benefits in the amount of \$1,750.00. The issue of the refusal of suitable work on January 3, 2008, is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw