

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HARLAN D GOODIN
Claimant

CLEAR VIEW SERVICE INC
Employer

APPEAL 21A-UI-13766-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (2R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On June 11, 2021, the claimant, Harlan D. Goodin, filed an appeal from the June 3, 2021, (reference 02) unemployment insurance decision that denied benefits based on the determination that claimant refused recall to suitable work with the employer, Clear View Service, Inc. The parties were properly notified about the hearing. A telephone hearing was held on August 13, 2021. Claimant participated personally. The employer participated through Tim Weber. The administrative law judge took official notice of the administrative record.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant worked for the employer as a detailer beginning in July 2019. On March 20, 2020, the employer notified claimant that it was laying him off due to the COVID-19 pandemic effective immediately. It stated it expected the layoff to be temporary, but did not know how long it would last.

In March 2021, claimant saw a Facebook ad indicating that the employer was hiring for positions like his. He assumed at that time that he would not be called back to work. He found another position and began working in that position in late-March 2021.

The employer is familiar with claimant's current employer, and asked that it relay a message to claimant that he was being recalled to work on March 26, 2021. Jason Miller, with the employer, also attempted to contact claimant personally, but never did get in contact. Claimant's phone never notified him that he had received a message or a missed call from Miller or the employer. However, around the same time, claimant was offered a job with his new employer, and elected to take that job offer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant.

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 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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) 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 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.

If employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. Here, the employer apparently depended on another employer to relay claimant's recall to him when its attempts at personal contact failed. The attempt to extend an offer of work to claimant was insufficient, and there is no evidence that claimant refused a bona fide offer of work from the employer. Since no offer of work was actually made, benefits are allowed.

The parties presented evidence that a separation from employment has occurred. There has been no determination made regarding the issue of separation, and the parties have not received notice of the issue.

Claimant is on notice that he must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The June 3, 2021, (reference 02) unemployment insurance decision is reversed. Employer did not communicate an offer of work to claimant. This issue is not disqualifying, and benefits are allowed.

REMAND:

The issue of separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

August 18, 2021
Decision Dated and Mailed

ar/mh