

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHERMAN Y SWANK**  
Claimant

**APPEAL NO. 06A-UI-10295-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONTRACT TRANSPORT INC**  
Employer

**OC: 04-30-06 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 19, 2006, reference 08, decision that allowed benefits. After due notice was issued, a hearing was held on November 7, 2006. The claimant did not participate. The employer did participate through Jim Nible, Safety Director, and Alan Bergman, Human Resources Manager. Employer's Exhibit One was received.

**ISSUE:**

Did the claimant refuse a suitable offer of work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver until September 28, 2006. The claimant was discharged for being uninsurable. The employer worked with the insurance company and eventually the insurance company agreed to insure the claimant. On October 5, 2006, Mr. Bergman attempted to contact the claimant to offer him his job back, but he was never able to reach the claimant. Mr. Bergman left a message with the information on the claimant's answering machine. The claimant did not return the call and the claimant's son later returned the company property the claimant still had since the time of his discharge. The claimant's son, also an employee of Contract Transport, told Mr. Bergman that his father had accepted other employment at Bison Trucking and would not be returning to work for Contract Transport.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

871 IAC 24.24(7) provides:

(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.

Before an offer of work can be evaluated for its suitability, it must first be determined that an actual offer of work was made. Here the record establishes that Mr. Bergman was never able to personally contact the claimant. Since no personal contact was ever made by the employer, the administrative law judge concludes no suitable offer of work was made. The employer has since discovered that the claimant could not have returned to work because he was working for another employer. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The October 19, 2006, reference 08, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw