

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES W WEEKS**  
Claimant

**APPEAL NO: 06A-UI-08786-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOUST, STEVEN  
STEVEN FOUST**  
Employer

**OC: 03/05/06 R: 02  
Claimant: Respondent (2)**

Iowa Code section 96.5(3)(a) – Refusal of Suitable Work  
Iowa Code section 96.3(7) – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Employer Steven Foust filed a timely appeal of the August 29, 2006, reference 04, decision that allowed benefits and concluded Claimant Charles Weeks had not refused to accept a suitable offer of employment. After due notice was issued, a hearing was held on September 18, 2006. Claimant Charles Weeks did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Steven Foust, owner, represented the employer. The administrative law judge took official notice of the Agency's administrative file.

**ISSUE:**

Whether the claimant refused an offer of suitable employment from a former employer. He did.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Charles Weeks was previously employed by Steven Foust as a full-time lawn care laborer until he was laid off in November 2005 due to lack of work. At that time, the employer paid Mr. Weeks \$12.00 per hour. On or about April 3, 2006, Mr. Foust telephoned Mr. Weeks and asked him if he wanted to come back to work. Mr. Weeks indicated that he would think about it and get back to Mr. Foust. The two gentlemen did not discuss proposed hours of employment or a proposed wage. Mr. Weeks did not again contact Mr. Foust. The employer had no other discussions with Mr. Weeks regarding further employment, and made no additional offers of further employment, beyond the telephone call of April 3, 2006.

Mr. Weeks established a claim for benefits that was effective March 5, 2006 and has received benefits. The offer from Mr. Foust came at the beginning of fifth week of Mr. Weeks' claim for benefits. Mr. Weeks' prior applicable average weekly wage was \$515.91. This number was based on wages Mr. Weeks earned during the fourth calendar quarter of 2004, the highest earnings quarter of Mr. Weeks' base period. Mr. Weeks' average weekly wage working for Mr. Foust had been and would be \$480.00.

Mr. Weeks received \$4,648.43 in benefits during the 16-week period of April 3-July 22, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Weeks refused a suitable offer of employment.

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.

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.

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

The evidence in the record indicates that Mr. Foust was Mr. Weeks' former employer and that Mr. Foust contacted Mr. Weeks on April 3, 2006 for the express purpose of recalling Mr. Weeks to the employment. The evidence in the record indicates that both gentlemen understood that the conditions of employment would be the same as had previously existed. Workforce Development rule 871 IAC 24.24(14) indicates that offers of employment from former employers are not to be treated the same as other offers of employment. Because the offer of employment came from a former employer, the average weekly wage analysis called for under Iowa Code section 96.5(3)(a) does not apply. Under Workforce Development rule 871 IAC 24.24(14), the provisions of Iowa Code section 96.5(3)(b) were controlling in determining whether the employment offered by the former employer was suitable. The evidence indicates that the offered position was not vacant due to a strike lockout or other labor dispute. The evidence indicates that the wages and hours or other conditions of the work offered were not substantially less favorable to Mr. Weeks than those prevailing for similar work in the locality. The evidence indicates that Mr. Weeks' reemployment was not conditioned upon Mr. Weeks joining a company union or resigning from or refraining from joining any bona fide labor organization.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Weeks did in fact refuse an offer of suitable employment from his former employer. The refusal of employment was effective April 3, 2006, the day upon which the offer was made and Mr. Weeks indicated a desire to defer his acceptance of the offer. Mr. Weeks' subsequent failure to contact Mr. Foust further indicated a refusal. Because Mr. Weeks refused a suitable offer of employment, he is disqualified for benefits until he has worked in and been paid wages for insured employment equal to 10 times his weekly benefit amount, provided he is otherwise eligible. The disqualification is effective April 3, 2006.

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.

Because Mr. Weeks has received benefits for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Weeks must repay to Iowa Workforce Development. Mr. Weeks is overpaid \$4,648.43 for benefits he received for the 16-week period of April 3-July 22, 2006.

**DECISION:**

The Agency representative's August 29, 2006, reference 04, decision is reversed. On April 3, the claimant refused a suitable offer of employment from a former employer. Effective April 3, 2006, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant on or after April 3, 2006. The claimant is overpaid \$4,648.43 for benefits he received for the 16-week period of April 3-July 22, 2006.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs