

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH A ORVIS
Claimant

APPEAL NO: 15A-UI-02696-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INDUSTRIAL FAB & MACHINE INC
Employer

OC: 12/28/14
Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Keith A. Orvis (claimant) appealed a representative's February 26, 2015 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits because of a refusal of work with Industrial Fab & Machine, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-02697-DT. The claimant participated in the hearing. Keith Loeffelholz appeared on the employer's behalf and presented testimony from two other witnesses, Brian Carmichael and Cody Zeltinger. The administrative law judge takes official notice of a statement in the claimant's appeal letter; if either party objects to the taking of this notice, that party must submit a written objection to the administrative law judge specifying the reason for the objection, to be received no later than 4:30 p.m. on the seventh day after the issuance of this decision. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant worked full time for the employer at its Waterloo, Iowa plant as a welder and occasional rigger. His hourly wage was \$15.50, and he was not required to undertake any out of town travel. He was laid off for lack of current work as of December 24, 2014.

On or about January 8, 2015 the employer contacted the claimant about the possibility of returning to the employment but in a different position in which he would earn \$25.00 per hour; however, this position would require extensive travel outside of Iowa performing installations of laser equipment. The claimant initially agreed, but on January 9, 2015 he advised the employer that the amount of travel was a problem and that he would need more money to be able to

accept the position.¹ The employer therefore understood that the claimant was declining the position as offered, and it proceeded to offer the position to another laid-off employee, Zeltinger, who accepted the position. While extensive travel was contemplated, as the out of state business needs have not yet materialized, as of the date of the hearing Zeltinger has not yet had to engage in the level of travel which had been contemplated, and has been doing regular welding work at the employer's Waterloo facility.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work without good cause. The amount of wage offered is not the only determinative factor in establishing whether the offer is suitable or whether there was good cause for refusal.

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. 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 [set] 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[.]

[Emphasis added.] See also Rule 871 IAC 24.24(15).

¹ In the hearing the claimant denied that he had ever declined the position or expressed any concern regarding the amount of travel which was being required. However, in the claimant's appeal filed on-line on March 1, 2015, under the "Reason For Appeal," the claimant stated, "being forced to accept work out of state puts undue hardship on myself & my family and cannot be required to satisfy unemployment eligibility." The administrative law judge therefore finds the testimony of the employer to be more credible that this was essentially the same reason the claimant gave to the employer as to the why he would not accept the position at the rate offered.

Rule 871 IAC 24.24(14)a specifies in pertinent part:

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.

While the wage offered by the employer for the new position would have met the wage requirements for "suitability," the suitability of an offer and the reasonableness of the refusal in each case must "be determined on its own merits as established by the facts." Rule 871 IAC 24.24(3). In this case, the offer made by the employer was not for the claimant's prior position or a reasonably comparable position, but was for a position which was not suitable for the claimant because of the extensive out of state travel, and he had good cause for refusing the position.

DECISION:

The representative's February 26, 2015 decision (reference 01) is reversed. The claimant did refuse an offer of work, but it was not a refusal of suitable work without good cause. He is therefore not disqualified for the refusal. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs