

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D BRYAN
Claimant

APPEAL NO. 13A-UI-04948-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RSB ENTERPRISES INC
Employer

OC: 12/09/12
Claimant: Respondent (4-R)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.3-7 - Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 18, 2013, reference 02, that concluded the claimant did not quit when he notified the employer that he would not return to work when recalled. A telephone hearing was held on June 17, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Randy Balk participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked seasonally for the employer from March 2010 to November 18, 2012. He started working part time but it changed to full-time work in April 2011. He worked a masonry pressure washer, maintenance, and grass mower.

The claimant was laid off at the end of the season in November 2012 with the understanding that he would be returning to work in March 2013.

On February 20, 2013, the owner, Randy Balk, called the claimant and recalled him back to work in his former job starting March 1, 2013. He would have been working full time and at the same rate of pay as the previous year, which was \$18.00 per hour regular work and \$12.00 per for shop work.

The claimant declined the job because he had lost his driver's license due to a conviction for operating a vehicle while intoxicated. The previous year he rode the 50 miles from his home in Mechanicsville to Davenport with a friend. He lost his ride to Davenport because the friend had obtained employment in Cedar Rapids. He could have been able to get a work permit if he put an ignition interlock in his vehicle, but he said it was too expensive.

The claimant filed for and received \$5,072.12 in benefits in the weeks between February 17 and June 1, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The evidence shows the claimant failed to return to work after being recalled, the work was suitable, and the claimant did not have good cause for declining the recall to work. For good cause to be established, the reasons for declining work have to be consistent with a genuine desire to remain employed. Since the claimant did not participate in the hearing, there is no evidence of what efforts the claimant made to secure transportation to work. He is disqualified from receiving benefits effective February 17 since the refusal of work took place during that week.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or

willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 18, 2013, reference 02, is modified in favor of the employer. The claimant failed to return to suitable work when recalled without good cause. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css