

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAROLD J HUGHES**

Claimant

**APPEAL NO. 10A-UI-06536-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSENBOOM MACHINE & TOOL INC**

Employer

**OC: 12/27/09**

**Claimant: Respondent (2R)**

Section 96.5-3-a – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 22, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 21, 2010. Claimant participated. Employer participated by Craig Vandrunen, human resources generalist. The record consists of the testimony of Harold Hughes; the testimony of Craig Vandrunen; and Employer's Exhibits 1-5.

**ISSUE:**

Whether the claimant refused suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a manufacturer of hydraulic cylinders. The employer operates two plants: one is in Sheldon, Iowa, and that other is in Spirit Lake, Iowa. The claimant was hired on July 24, 2000, and worked at the plant located in Spirit Lake. He was a full-time employee. The employer placed the claimant on temporary layoff on February 26, 2009. The claimant was then permanently laid off on August 14, 2009. The claimant was earning \$12.60 per hours plus a \$2.00 shift premium for a total of \$14.60 per hour.

On March 26, 2010, the employer offered the claimant a full-time position on the day shift as a fork lift driver. The claimant would earn \$12.60 per hour. The claimant refused the position because he wanted to work nights and did not want to take a cut in his hourly rate. At that time the claimant had been off work for 32 weeks on permanent layoff. The reduction in wages was approximately 13.7%. The claimant was qualified to be a fork lift driver. The claimant was offered another job on April 14, 2010, on the night shift. This job was a production job and the claimant had performed this job for five years while working for the employer. His earnings would have been \$14.60 per hour. The claimant decided not to take this job as he was looking for other employment at the time. The claimant is presently working full time for another

employer and has been since late April 2010. He never contacted the employer to let the employer know that he was not accepting the April 14, 2010 job offer.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

The evidence established that the claimant refused bona fide offers of work from the employer first on March 26, 2010, and April 14, 2010. The claimant did not accept the first job offer because he wanted a night shift job and did not want to lose his shift differential. The difference in pay was approximately 13.7%. The second job was a night shift job and paid the same wages the claimant would have earned at the time he was laid off. The claimant also decided not to take this job although he did not tell the employer about his decision.

Iowa law states that an individual shall be disqualified from receiving benefits if a suitable job is not accepted by the individual. The claimant was offered a suitable job on March 26, 2010. The claimant refused the job because he wanted a night shift job and because he would get \$2.00 less per hour. At this time the claimant had been unemployed for 32 weeks. Since the claimant was offered jobs he had previously performed, he was able to do the work in question. The job was offered after the 18th week of unemployment and since the job offered allowed the claimant to earn more than 65% of his average weekly wage for insured work paid to him during that quarter of his base period in which his wages were highest, the job was suitable.

The administrative law judge concludes that the claimant refused suitable work on March 26, 2010. He is not eligible for benefits after that date.

**DECISION:**

The decision of the representative dated April 22, 2010, reference 01, is reversed. The claimant is not eligible for unemployment benefits after March 26, 2010.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs