

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM A NESS
Claimant

APPEAL NO. 09A-UI-18512-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORTEZ TRUCK SALES & EQUIPMENT INC
Employer

OC: 11/01/09
Claimant: Appellant (1)

Section 96.4-3 - Availability for Work

Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 4, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 21, 2010. Claimant participated. Employer participated by Richard Cortez, owner/president; Connie Keatoning, secretary; Mary Hansen, new sales representative; and Cliff Poole, general manager. The record consists of the testimony of Tim Ness; the testimony of Richard Cortez; the testimony of Connie Keatoning; the testimony of Mary Hansen; and the testimony of Cliff Poole.

ISSUE:

Whether the claimant refused a suitable offer of 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 sells, services and installs truck equipment. The claimant worked as a salesperson for the employer. He started sometime in 2004. He was paid a salary and did not receive commissions.

On September 11, 2009, the claimant informed the employer that he was leaving to move to Minneapolis. He gave the employer two weeks notice. The employer accepted the claimant's resignation and honored the claimant's two week notice.

The claimant changed his mind about resigning and informed the employer on September 28, 2009, that he had "decided to stay on." The employer had hired a replacement for the claimant. Mr. Cortez, the company president, told the claimant that he would consider rehiring him. However, Mr. Cortez and Mr. Poole, the general manager, were going to change the salary

structure for sales people. If the claimant decided to stay, he would be paid a base salary and commissions. The new sales person had agreed to this type of compensation structure. Mr. Cortez and Mr. Poole were in the process of finalizing the terms of the sales compensation package.

The claimant was given a copy of the new package on October 30, 2009. Among the terms was a \$20,000.00 base salary plus expenses and a sales commission. This salary package would result in compensation equal to or greater than the claimant's previous salary. On November 2, 2009, the claimant came in and said he did not want to stay on those terms. The new sales person, who actually started on November 9, 2009, was paid a salary plus commission. In her opinion, the sales commission formula was "very good". She was able to earn \$1,200.00 in commission in 1 ½ months.

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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The employer offered the claimant work on October 30, 2009, which he refused. The offer of employment was made within the first five weeks since he filed his most recent claim. The claimant was offered employment with wages that did equal 100 percent of his average weekly wage paid during the highest quarter of his base period,. The administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, he does not qualify for unemployment insurance benefits.

DECISION:

The decision of the representative dated December 4, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs