

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES T TONEY
Claimant

SCHUSTER GRAIN CO INC
Employer

APPEAL 20A-UI-10788-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/20
Claimant: Respondent (1-R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On September 3, 2020, Schuster Grain Co., Inc. (employer) filed a timely appeal from the August 25, 2020, reference 01, unemployment insurance decision that allowed James T. Toney (claimant) to receive benefits. After due notice was issued, a telephone conference hearing was held on October 21, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Krystin Sitzmann, Director of Safety. The Employer's Exhibit 1 was admitted into the record.

ISSUES:

Was a suitable offer of work made to the claimant?
If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant began working for the employer on July 17, 2019, as a full-time employee. During his employment, he was injured and his doctor determined he could not work. On March 5, 2020, the claimant's doctor released him to work without restrictions. The claimant declined to return. The employer made other attempts to get him to return to work which he refused. The employer terminated the claimant's employment on April 9. Whether the claimant's separation on April 9 qualifies him for unemployment insurance benefits has not been investigated or adjudicated by the Benefits Bureau.

The claimant did not have a valid claim for unemployment insurance benefits between March 5 and April 9. The claimant filed his claim for benefits effective May 17. The employer has not made any offers of work after the claimant filed his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge does not have jurisdiction to decide the issue of failure to accept an offer of work as the offer occurred outside the claim year. Benefits are allowed, provided the claimant meets all other eligibility requirements.

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. (1) 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:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(8) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(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.

The administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits are allowed, provided the claimant meets all other eligibility requirements.

Whether the claimant's separation on April 9, 2020, qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau for a fact-finding interview and decision.

DECISION:

The August 25, 2020, reference 01, decision is affirmed. The offer of work was made outside of the claimant's benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

Whether the claimant's separation on April 9, 2020, qualifies him for unemployment insurance benefits is remanded to the Benefits Bureau for a fact-finding interview and decision.



Stephanie R. Callahan
Administrative Law Judge

October 23, 2020
Decision Dated and Mailed

src/scn