

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERE J GARDNER**  
Claimant

**APPEAL NO. 11A-UI-16528-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENNIFER MILLS**  
Employer

**OC: 01/02/11**  
**Claimant: Appellant (2)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated December 23, 2011, reference 04, which held claimant ineligible for unemployment insurance benefits because he refused recall to suitable work with the employer. After due notice, a telephone conference hearing was scheduled for and held on January 30, 2012. Claimant participated. The employer participated by James Mills, general manager. The record consists of the testimony of Jere Gardner and the testimony of James Mills. Official notice is taken of agency records.

The issues in this case were incorrectly identified as separation issues on the notice of appeal and notice of telephone hearing. The issues in this case are whether the claimant failed to accept suitable work and whether the claimant is able and available for work. The parties agreed to waive notice and have these issues determined by the administrative law judge.

**ISSUES:**

Whether the claimant refused an offer of suitable work; and  
Whether the claimant is able and available for 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 an automotive repair shop located in Dubuque, Iowa. The claimant was hired in February 2011, as a full-time mechanic. The claimant was terminated in the third or fourth week of October 2011, after a customer complaint about a repair done by the claimant. There had been two previous complaints from customers about the claimant's work and James Mills was frustrated and terminated the claimant after these three "comebacks."

The claimant filed for unemployment insurance benefits and a fact finding was scheduled. On the morning of the fact finding, Mr. Mills called the claimant to ask about him about a stolen car that was being investigated. Mr. Mills then told the claimant that he had had to fire another

technician and asked the claimant if he would come back to work. Approximately three weeks had passed between the termination and this conversation. The claimant said he would have to think about it and discuss it with his wife. The job offer then came up during the fact-finding interview.

The claimant decided not to return to work for the employer but he did not contact the employer. A representative of the agency called Mr. Mills and asked Mr. Mills if the claimant had come back to work. Mr. Mills said no. A decision was then issued disqualifying the claimant from receiving benefits due to a refusal of suitable work.

The claimant is actively looking for work and is available for work.

### **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. The following legal principles must be considered.

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 law also states that notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied if the wages are substantially less than those prevailing for similar work in the locality. Iowa Code § 96.5-3-b(1). The unemployment insurance rules require a personal offer of work to an actual job opening and a definite refusal of

the offer before a claimant can be found to have refused an offer of suitable work. 871 IAC 24.24(1). Finally, the rules state the wages formula of Iowa Code § 96.5-3-a is based on the number of weeks that have elapsed following the effective date of the most recent new or additional claim filed by the claimant. 871 IAC 24.24(15)i.

The evidence in this case established that there was a personal offer of work made by Mr. Mills. Although there was a personal offer of work made by Mr. Mills, the claimant's response that he would think about the offer and get back to the employer falls short of the rule's requirement that there be a definite refusal by the claimant before he is disqualified under Iowa Code § 96.5-3-a. The claimant cannot be disqualified for refusing suitable work. The evidence also showed that the claimant is able and available for work. The administrative law judge concludes that the claimant is eligible for unemployment insurance benefits and is not disqualified on the basis of a refusal of suitable work.

**DECISION:**

The decision of the representative dated December 23, 2011, reference 04, is reversed. The claimant is eligible to receive unemployment insurance benefits and did not refuse recall to suitable work with the employer.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs