

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASEY A HIGGINS
Claimant

ZINNEL ROOFING EXTERIORS LLC
Employer

APPEAL 21A-UI-13876-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/29/19
Claimant: Appellant (4R)

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:

The claimant/appellant, Casey A. Higgins, filed an appeal from the June 10, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits on the basis that claimant refused a suitable recall to work on March 27, 2021. The parties were properly notified about the hearing. A telephone hearing was held on August 12, 2021. The claimant participated personally. The employer, Zinnel Roofing Exteriors LLC., was represented by Stu Cochrane, attorney at law. Anne Zinnel and Curt Zinnel testified. Employer Exhibits 1-30 were admitted. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUE:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began employment for this employer in December 2016. He was a full-time laborer earning \$20.00 per hour plus commission at the time he established his claim for unemployment insurance benefits effective December 29, 2019. Claimant had been seasonally laid off at that time.

On March 23, 2020, claimant was recalled to work and performed work that day. It was his last day of employment. On March 24, 2020, employer had a staff meeting. Claimant overslept and

missed the meeting. Employer met with claimant on March 27, 2020, and separation ensued. No subsequent offers of work were made to the claimant in the capacity as an employee. Since separation, the claimant has worked as an independent contractor for this employer and in self-employment.

The administrative records reflect that when the employer responded to the initial notice of claim, it stated the claimant had refused an offer of work on around March 27, 2020. However, the claimant had returned to work and performed work on March 23, 2020, and the claimant had not yet separated when the claimant allegedly refused to perform work. The claimant's March 27, 2020 separation has not yet been addressed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no valid offer of work was made to the claimant on March 27, 2020.

Cases of "refusal of suitable work without good cause" are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was made and that it was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(1)a provides:

- (1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

The claimant did return after recall on March 23, 2020. The employer, in error, stated in its claim protest that the claimant refused an offer of work on March 27, 2020, when the issue at hand needing to be addressed is whether he may have refused to perform work *in his existing employment*, which led to separation. Therefore, the administrative law judge concludes there was no valid offer of work made to the claimant for him to decline. Benefits are allowed, provided he is otherwise eligible.

The issues of claimant's permanent separation and whether claimant was able and available for work effective March 27, 2020 due to self-employment are remanded to the Benefits Bureau for an initial investigation and decision.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The June 10, 2021 (reference 01) initial decision is modified in favor of the claimant/appellant. No valid offer of work was made by the employer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issues of claimant's permanent separation and whether claimant was able and available for work effective March 27, 2020 due to self-employment are remanded to the Benefits Bureau for an initial investigation and decision.



Jennifer L. Beckman
Administrative Law Judge
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August 18, 2021
Decision Dated and Mailed

jlb/mh