

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY IRELAND
Claimant

APPEAL NO: 15A-UI-12923-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID IOWA DEVELOPMENT ASSOC REG PL
Employer

OC: 07/12/15
Claimant: Respondent (1)

Section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 18, 2015, reference 15, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2015. The claimant participated in the hearing. Jay Kammerer, Transit Manager and Cliff Weldon, Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The employer made an offer of work to the claimant on October 8, 2015. That offer included the following terms: Flexible hours, between 35 and 40 per week, driving a short, regional transit bus, that accommodates 16 passengers and paying \$10.19 per hour. The claimant's average weekly wage is \$704.83. The offer was made in week 13 of unemployment and under Iowa law must be at least 70 percent of the claimant's average weekly wage.

The claimant has another job as a school bus driver for the Fort Dodge Community School District. He earns \$18.45 per hour in that job but it is a part-time job. He just received a permanent route and is now eligible for out-of-town routes as well but will still be a part-time employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not refuse a suitable offer of work.

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.

Iowa Admin. Code r. 871-24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

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

(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.

Although this employer was willing to work around the claimant's school bus driving job, the claimant felt he would have to quit his part-time position with the school district in order to accept the position with Midas Council of Governments. In addition to the fact the claimant did have another job, albeit part time, this offer was unsuitable as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. The claimant's average weekly wage is \$704.83. The offer of work in this case was made in the claimant's week 13 of unemployment and consequently needed to pay at least 70 percent of his average weekly wage which is \$493.00, to be considered suitable. Even using the highest number of hours the employer would possibly give the claimant, 40, he would have earned \$407.60, which is obviously lower than \$493.00. Therefore, the administrative law judge must conclude the job offer was unsuitable as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The November 18, 2015, reference 15, decision is affirmed. The claimant did not refuse a suitable offer of work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css