

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER W HEINTZ**

Claimant

**APPEAL NO. 13A-UI-02750-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BAKER ELECTRIC INC**

Employer

**OC: 12/09/12**

**Claimant: Respondent (2R)**

Section 96.5-3-a – Refusal of Work  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from the representative's decision dated March 7, 2013, reference 01, which held that the claimant was able and available for work and did not refuse to accept suitable work. After due notice was issued, a hearing was held by telephone conference call on April 3, 2013. The claimant participated personally. The employer participated by Larry Enga, Shop Superintendent. The record consists of the testimony of Larry Enga and the testimony of Peter Heintz.

**ISSUES:**

Whether the claimant refused an offer of suitable work; and  
Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is an electrical contractor. The employer has a collective bargaining agreement with Local 347 of the International Brotherhood of Electrical Workers.

The claimant was laid off on December 9, 2012. He was given the option of either "sitting" and waiting for work or returning to the union hall, where he would be put on the list. The claimant elected to sit and wait for work with the employer.

On February 13, 2013, the claimant was offered work at a project for Microsoft in West Des Moines, Iowa. The hours were from 7:00 a.m. to 7:00 p.m. The rate of pay for this job was \$35.18 per hour for the first eight hours and then \$65.16 for the next four hours. Saturday pay was \$48.87 per hour with the next four hours rate of \$65.16 per hour. The Sunday rate was \$65.16 for all hours worked. The job would last approximately one to two weeks. Seventeen other laid off employees accepted the work. The pay was comparable to the wages the claimant had been paid while he was working for the employer.

The claimant refused this offer of work. He did not want the job because he would have to work from 7:00 a.m. to 7:00 p.m. His normal hours were 6:00 a.m. to 4:30 p.m. He did not want to work those hours because he would not be able to see his wife.

#### **REASONING AND CONCLUSIONS OF LAW:**

The general rule is that an individual is disqualified for benefits for refusing a suitable offer of work, referral by the agency to suitable work or a recall to suitable work. Iowa Code Section 96.5-3. There is a two part test for suitability. First, the wages must be suitable and second the job must be suitable. In this case, there is no question that the wages were suitable. The issue is whether the job was suitable. Job suitability is based on the following factors: degree of risk to health, safety and morals; individual's physical fitness; prior training and experience; prospects of finding employment in claimant's normal occupation; commuting distance; and other reasonable factors.

The claimant refused an offer of suitable work and is therefore disqualified from receiving unemployment insurance benefits. The only reason the claimant refused this work was because he did not like the work hours. He testified that if he worked from 7:00 a.m. to 7:00 p.m. he would not be able to see his wife. This is not a reasonable factor for refusing suitable work, particularly since the job was only expected to last one to two weeks. The claimant lives in Nevada and the job was in West Des Moines. The administrative law judge does not believe that the claimant was totally precluded from seeing his wife for one to two weeks simply because he would be working for twelve hours a day. The claimant may have had good personal reasons for refusing the job but the bottom line is that he refused an offer of suitable work and there was no good reason for that refusal. Benefits are denied effective February 13, 2013.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The unemployment insurance decision dated March 7, 2013, reference 01, is reversed. The claimant refused an offer of suitable work. Effective February 13, 2013, 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. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/tll