

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL P BELL
Claimant

APPEAL NO. 07A-UI-04663-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUOTATION INSURANCE AGENCY
Employer

OC: 01/28/07 R: 02
Claimant: Respondent (1)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Quotation Insurance Agency filed an appeal from a representative's decision dated May 2, 2007, reference 03, which held that no work had been offered to Daniel Bell on April 16, 2007. After due notice was issued, a hearing was held by telephone on May 23, 2007. Mr. Bell participated personally. The employer participated by Jim Eastvold, Owner.

ISSUE:

At issue in this matter is whether any disqualification should be imposed for Mr. Bell's refusal of work with Quotation Insurance Agency.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Bell worked for Quotation Insurance Agency from February 14, 2005 until January 29, 2007 as a full-time insurance agent and customer service representative. He became separated from the employment because he refused to sign a non-compete agreement. Such an agreement had not been presented to him at the time of hire and he was not told he would have to sign one at a later date.

On May 1, 2007, Mr. Bell was contacted by Jim Eastvold and offered his former job back. He was told that he would be required to sign a non-compete agreement but that it had been revised since it was presented to him in January. All other terms and conditions of the employment would have been the same as before the January separation. Mr. Bell declined the work because he did not want to sign a non-compete agreement and because he had not made application for work with Mr. Eastvold.

Mr. Bell filed an initial claim for job insurance benefits effective January 28, 2007. He filed an additional claim effective April 8, 2007. The average weekly wage paid to him during that quarter of his base period in which his wages were highest was \$571.15. The wage offered on May 1 was \$11.00 per hour for a 40-hour workweek. Mr. Bell would also have had the opportunity to earn a bonus of \$5.00 for each insurance application he submitted.

REASONING AND CONCLUSIONS OF LAW:

An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. The work offered to Mr. Bell on May 1 was new employment and not a recall from layoff. His working relationship with Quotation Insurance Agency was severed on January 29, 2007. Although he was offered his old job, it would have been for a new period of employment. For the above reasons, the work had to constitute suitable work within the meaning of the law.

In order for work to be considered suitable, it must pay the wages specified in section 96.5(3)a. Mr. Bell was offered work during the first five weeks after he filed his additional claim effective April 8, 2007. Therefore, the job had to pay at least 100 percent of the average weekly wage paid to him during that quarter of his base period in which his wages were highest. In other words, the job had to pay at least \$571.15 per week in order to be considered suitable work. The work offered on May 1 only paid \$440.00 per week. Because it did not pay the requisite wages, it was not suitable work within the meaning of the law. Although he would have had the opportunity to earn bonuses, they were too speculative to be counted a part of his wages. For the reasons stated above, no disqualification may be imposed for the refusal.

Since the work offered was not suitable work, the administrative law judge need not address the issue of the non-compete agreement as it is moot.

DECISION:

The representative's decision dated May 2, 2007, reference 03, is hereby affirmed. The work offered to Mr. Bell on May 1, 2007 was not suitable work within the meaning of the law. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css