

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JERRY E SHIPP

Claimant

APPEAL NO. 20A-UI-10702-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMETOWN PLUMBING & HEATING CO

Employer

OC: 03/29/20

Claimant: Appellant (5R)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 28, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on June 9, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 20, 2020. Claimant participated. Employer participated through Mike O'Day. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records, KCCO, DBRO, KPYX and WAGE-A. The parties waived formal 10-day notice on the work refusal issue.

ISSUES:

Whether the claimant refused an offer of suitable work without good cause.

Whether the claimant voluntarily quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time HVAC service technician from 2018 until June 9, 2020, when he refused recall to the employment following an April 3, 2020 temporary layoff. The claimant's regular hours were 6:00 a.m. to 2:30 p.m. or 7:00 a.m. to 3:30 p.m., Monday through Friday. The claimant's pay was \$30.00 an hour. The claimant worked primarily on commercial construction jobsites, but also spent a significant portion of his work time responding to calls for service at homes and commercial sites. Every fifth week the claimant was on call for the week. These conditions were in place throughout the employment. On March 20, 2020, the employer announced to staff and clients several substantial safety measures the employer was implementing in light of the COVID-19 pandemic. The employer experienced a decrease in demand for services in light of the COVID-19 pandemic and this prompted the temporary layoff at the beginning of April 2020.

On June 5, 2020 the employer spoke with the claimant by telephone to recall him to the employment effective June 8, 2020. The claimant declined to return the employment at that time unless the employer relieved him of the on-call duties and of having to go to customer's homes in response to calls for service. The claimant cited his age and his history of asthma and asserted that it was unsafe for him to continue to perform the on-call duties. The claimant indicated that he remained willing to report for commercial construction jobsite work. The claimant had not consulted with a medical professional and had not provided medical documentation to the employer in support of his request for accommodations. In declining to amend the conditions of employment, the employer considered the several safety precautions the employer had in place since March 2020 to hinder the spread of COVID-19. These included making appropriate personal protective equipment to employees, asking customers questions about COVID-19 exposure when scheduling appointments, giving discretion to employees to decline to enter a home or commercial facility if the employee did not feel safe, and several other safety measures. The employer also questioned the claimant's logic. The employer deemed the commercial construction jobsite and presenting the greater risk of COVID-19 transmission in light of the number of people coming and going on the jobsite. The claimant provided the employer with a resignation on June 9, 2020 to memorialize his decision not to return to the employment.

In response to the April 3, 2020, temporary lay-off, the claimant had established an original claim for unemployment insurance benefits. Iowa Workforce Development deemed the claim effective March 29, 2020. This employer is the sole base period employer. The claimant made weekly claims for each of the weeks between March 29, 2020 and June 13, 2020. The claimant received regular benefits and Federal Pandemic Unemployment Compensation (FPUC) benefits for each of the weeks between March 29, 2020 and June 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-3-b 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.

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 for refusing 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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

- a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.
- b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Administrative Code rule 871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

- a. In deciding whether or not a claimant failed to accept suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact 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.

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.

The evidence establishes that that claimant refused recall to suitable work at a time when he was otherwise able to work and available for work. The recall was for the same work the claimant had performed throughout the employment until the April 3, 2020 layoff. The employer had taken appropriate steps to ensure a reasonable safe work environment and work protocols. The work did not involve any of the concerns set forth at Iowa Code § 96.5(3)(b). The employer made direct contact with the claimant by phone call to recall him to the employment effective June 8, 2020. The claimant provide a definite refusal through the email correspondence, including his resignation email. The recall and refusal each occurred during the claim week of June 7-13, 2020. The claimant presented insufficient evidence to establish a good cause basis for refusing recall to the employment. Effective June 7, 2020, the claimant is disqualified for

benefits until he has worked in and been paid wages equal to 10 times his weekly benefit amount. The employer's account shall not be charged for benefits for the period beginning June 6, 2020.

DECISION:

The August 28, 2020, reference 01, decision is modified as follows. The claimant refused an offer of suitable employment on June 8, 2020 without good cause. Effective June 6, 2020, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The employer's account shall not be charged for benefits for the period beginning June 7, 2020.

This matter is remanded to the Benefits Bureau for entry of overpayment decisions regarding the regular and FPUC benefits the claimant received for the benefit week that ended June 13, 2020.



James E. Timberland
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

jet/scn

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**