

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID STARR
Claimant

APPEAL NO: 16A-UI-08344-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNNINGHAM INC
Employer

OC: 01/10/16
Claimant: Respondent (2)

Section 96.5(3)a – Work Refusal
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 28, 2016, reference 04, 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 August 31, 2016. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Betsy Miller, Human Resources Manager, 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 claimant was hired by the employer January 18, 2016, and worked until he was temporarily laid off due to a lack of work April 29, 2016. After repeated calls, emails and text messages to the claimant attempting to recall him to work effective June 20, 2016, did not produce a response, the employer recalled the claimant in a certified letter mailed June 14, 2016. That offer included the following terms: Full-time work as a mechanic on the 7:00 a.m. to 3:30 p.m. shift earning \$18.00 per hour. The claimant's average weekly wage is \$999.00. The offer was made in the 13th week of unemployment and consequently had to meet 70 percent of the claimant's average weekly wage. The claimant never responded to the certified letter and it was returned to the employer July 5, 2016.

The claimant received benefits in the amount of \$2,578.00 for the six weeks ending July 30, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse a suitable offer of work.

Iowa Code § 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. (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.

The claimant was on a short-term layoff and the employer attempted to recall him to work beginning June 20, 2016. After repeated calls, emails, and text messages from the employer to the claimant went unanswered the employer sent the claimant a certified letter with the recall information June 14, 2016. The claimant would be performing the same job at the same hours for the same wages. Because the claimant was in his 13th week of unemployment when the offer was made it had to meet 70 percent of his average weekly wage or \$699.00. The employer's offer was for \$720.00 per week. The offer recalling the claimant to work was suitable as it did meet the wage requirements and the claimant did not have a good-cause reason for the refusal. Consequently, benefits are denied.

As a result of this decision the claimant is overpaid benefits in the amount of \$2,578.00 for the six weeks ending July 30, 2016.

DECISION:

The July 28, 2016, reference 04, decision is reversed. The claimant did refuse a suitable offer of work. Benefits are denied until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,578.00 for the six weeks ending July 30, 2016.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs