

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHOL M KONGDOK
Claimant

EMCO ENTERPRISES LLC
Employer

APPEAL 18A-UI-03562-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2018, (reference 05) unemployment insurance decision that withheld benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 12, 2018. Claimant participated and testified. Employer did not participate.

ISSUES:

Is the claimant able to work and available for work?

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a line-worker, until December 10, 2017, when he was temporarily laid off due to lack to work during the slow production season. In early February 2018, claimant received notice, in writing and via telephone, that he was being recalled back to work and should report to work at his normally scheduled time on February 19, 2018. At this point in time, claimant had accepted work with a new employer, Swift Transportation. Claimant had not yet started work with the new employer, as he was first required to complete a three-week course to obtain his CDL. The course began on February 19, 2018, the same day the employer wanted him to return to work. Claimant began his CDL course on February 19, as scheduled. The course was schedule Monday through Friday, beginning at 7:00 a.m. and generally ending each day sometime between 2:00 p.m. and 4:00 p.m. Claimant's working hours with this employer were Monday through Friday, beginning at 7:00 a.m. and ending at 3:30 p.m., making it impossible for him to both work and attend the training required by the new employer before he could start. Claimant notified the employer's human resource department that he would not be returning to work, and why. Claimant was to begin work with the new employer once the course was completed, on March 14, 2018, but his start day was delayed two weeks while he

addressed a family matter involving his minor child. Claimant did eventually start work with the new employer on March 28, 2018. Claimant's separation from this employer has not been determined.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant failed to accept a suitable offer of recall to work and is otherwise not available for work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.24 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.

...

(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 section 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.

The employer gave claimant notice that he was to return to the position from which he was temporarily laid off, effective February 19, 2018. The offer was suitable as it was a recall to the position claimant was temporarily laid off from. Claimant declined the offer because he was waiting to go to work for a specific, new, employer. Accordingly benefits are withheld, effective February 18, 2018, because claimant had not yet begun work for the new employer and his

availability to work was unduly limited while he waited for his work with the new employer to begin.

DECISION:

The March 13, 2018, (reference 05) unemployment insurance decision is affirmed. The offer of work was suitable, but claimant was unavailable for work. Benefits are withheld until such time as the claimant is otherwise eligible.

REMAND:

The issue of claimant's separation from EMCO Enterprises LLC is remanded to the benefits bureau of Iowa Workforce Development for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs