

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN D WATTS

Claimant

APPEAL NO. 15A-UI-08354-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALERIS INC

Employer

OC: 12/14/14

Claimant: Respondent (2)

Iowa Code § 96.5-3-a – Work Refusal

Iowa Code § 96.4-3 – Able and Available

Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 15, 2015, reference 03, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on August 17, 2015. Claimant participated personally. Employer participated by Stacey Springer. Employer's Exhibits One was admitted into evidence.

ISSUES:

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

Whether claimant is overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer made an offer of work to the claimant on May 28, 2015. Claimant did not accept that offer on June 3, 2015. That offer included the following terms: Claimant would be paid a base pay of \$10.50 an hour plus a shift differential of \$1.50 for a total offer of \$12.00. Working 40 hours a week, claimant would be paid \$420.00 a week before the shift differential addition of \$60.00 a week to create a total of \$480.00 a week. Claimant's average weekly wage during claimant's base year is \$653.00. This base year wage included both claimant's hourly pay, and his shift differential pay. The offer was made in the 22nd week of his unemployment. Claimant refused the offer of work because employer did not allow claimant to be rehired at his old benefits level. Claimant was receiving healthcare benefits through the government in addition to his unemployment benefits, and as claimant has a disability, he feared that he would not have medical coverage for the first 90 days while at work.

Claimant was initially offered another position with employer at a reduced wage at the time of job separation. Had claimant accepted that new job, he would have been able to keep all of earned benefits. Claimant declined that job before it was ever officially offered as he had been in discussions with employer about another possible position that did not come about.

Claimant received \$369.00 a week in benefits from December 20, 2014 through June 27, 2015.

REASONING AND CONCLUSIONS OF LAW:

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. 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:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening 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.

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work. Claimant was a full-time employee whose average wages were calculated at a gross level to be at or around \$653.65. These wages included step increases and shift differential. Claimant was to be paid \$12.00 an hour with the shift offered on May 28, 2015. The gross wages to be received would exceed 65 percent of the highest quarter average wages during claimant's base period. As 65 percent of claimant's gross would be \$424.87 a week, claimant needed to accept a job paying at or above that amount. The job offer would create gross wages of \$480.00 a week.

Claimant argues that the insurance concerns he has also led to his decision to decline the position. While this is a logical thought on the part of claimant, it does not enter into the equation for determination of disqualification from the receipt of unemployment benefits.

Claimant received four weeks of benefits amounting to \$1476.00 since the date when he declined appropriate employment with employer. Said amounts received are overpayments. All other amounts received were proper for claimant. Throughout all relevant periods of time, claimant was able and available to work.

DECISION:

The decision of the representative dated July 15, 2015, reference 03 is reversed. 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. Claimant is additionally deemed to have been overpaid benefits in the amount of \$1476.00 for the weeks ending June 6, 2015 to June 27, 2015.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs