

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W BARROW
Claimant

APPEAL NO. 12A-UI-04826-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 10/02/11
Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated April 25, 2012, reference 04, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 22, 2012. The employer participated by Stacy Navarro, human resources coordinator. The claimant did respond to the hearing notice and provided a telephone number as well as documentary evidence. When the claimant was called, voicemail picked up. A detailed message was left for the claimant on how to participate in the hearing. The administrative law judge rechecked the number and made a second call to the claimant. Again, voice mail picked and a second message was left for the claimant. The claimant did not call during the hearing. The record consists of the testimony of Stacy Navarro. Official notice is taken of agency records.

ISSUE:

Whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for benefits with an original claims date of October 2, 2011. The claimant was referred to the employer by the agency. The claimant has never worked for the employer and has earned no wage credits from the employer. The claimant, at the direction of the agency, applied for work on April 3, 2012. On April 24, 2012, the claimant was offered a job at Osceola Foods by Michelle Allen. The job offer was for 40 hours per week and the pay would range from \$8.50 per hour to \$11.00 per hour. The claimant told Ms. Allen that he would need a couple of days to think about the job offer. He never contacted the employer again.

The claimant was receiving Emergency Unemployment Compensation Benefits (EUCU) since the week ending January 14, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause. The following legal principles must be considered.

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....

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.

The law also states that notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied if the wages are substantially less than those prevailing for similar work in the locality. Iowa Code § 96.5-3-b(1). The unemployment insurance rules require a personal offer of work to an actual job opening and a definite refusal of the offer before a claimant can be found to have refused an offer of suitable work. 871 IAC 24.24(1).

In this case, the evidence showed that a definite offer was made to the claimant. There was no definite refusal. The claimant simply said that he would think about it and he never responded thereafter. Since there was no definite refusal, the claimant cannot be found to have refused a suitable offer of work. The employer's account will not be charged, because the claimant has never worked for the employer and was receiving EUCU benefits.

DECISION:

The unemployment insurance decision dated April 25, 2012, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge for benefits paid to the claimant.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw