

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY ROSS
Claimant

TRADESMEN INTERNATIONAL LLC
Employer

APPEAL 18A-UI-01601-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 25, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2018. Claimant participated. Employer participated through the general manager of the Davenport office Cody Pech. Project coordinator Taylor Whitsitt attended the hearing on behalf of the employer. Official notice was taken of the administrative record with no objection.

ISSUE:

Did the claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant started with the employer on February 22, 2016 and he would worked on various assignments for the employer. When claimant's assignment ends, the employer contacts him when it has another assignment available. Claimant's most recent assignment with this employer was from July 17, 2017 to September 6, 2017. Claimant was full-time and he was paid \$20.00 per hour. The assignment was located in Bettendorf, Iowa. After this assignment ended, the employer did not have any other work for claimant at that time.

On October 12, 2017, the employer contacted claimant and made him an offer of work via the telephone. The offer of work was for an assignment located in Templeton, Iowa, which was three hours and forty-one minutes (242.6 miles) from the employer's Davenport office. This offer included the following terms: full-time, plus overtime; approximately \$21.00 per hour; and \$75.00 per diem for travel and hotel. Claimant was able to and available for work on October 12, 2017, but he rejected the offer because it was too far from his residence. When claimant started with the employer, he told the employer he was only willing to travel within 100 miles of the Quad Cities. Claimant has not worked that far from the Quad Cities for this employer. The farthest claimant has traveled while employed with this employer has been

Muscatine, Iowa, which is forty-five minutes from the employer. After October 12, 2017, the employer has not contacted claimant with a job offer.

During the week-ending February 3, 2018, claimant worked for a company ITS Services for approximately three days at the Menards' job site in Muscatine, Iowa. Claimant earned \$15.00 per hour, but he did not recall how much he earned on this assignment through ITS Services. The administrative record reflects that claimant filed a weekly continued claim for benefits for the week-ending February 3, 2018, but he did not report that he had earned wages.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not offer claimant a suitable offer of work and he had good cause for refusing the work. Benefits are allowed.

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. 871-24.24(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(4) provides:

(4) *Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3).* Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Admin. Code r. 871-24.24(7) 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.

On October 12, 2017, the employer offered claimant an offer of work that was over 240 miles from the employer's office. Claimant had previously instructed the employer that he was only willing to travel within 100 miles from the employer's office. Claimant had no prior work experience with this employer beyond this 100 mile radius. Therefore, the employer's offer of work was unsuitable because the distance to the job site was too great. Furthermore, claimant had a good cause reason for not accepting the offer of work since the distance to the job site was too great. Benefits are allowed.

DECISION:

The January 25, 2018, (reference 01) decision is affirmed. The employer's offer of work was unsuitable and claimant had a good cause reason for not accepting the offer of work since the distance to the job site was too great. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The issue of whether claimant properly reported wages for the week-ending February 3, 2018 as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and determination.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs