

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE W VANDERSCHAAF
Claimant

APPEAL NO. 09A-UI-15149-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PATRICK M PINNEY CONTRACTORS INC
Employer

**Original Claim: 03/15/09
Claimant: Respondent (1)**

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 28, 2009 (reference 02) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 12, 2009. Claimant participated with Kim Derby and Rick Derby. Employer participated through Patrick Pinney.

ISSUE:

The issue is whether an offer of work was made, if claimant refused a suitable offer of work, and, if so, whether the refusal was for a good cause reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer left cell phone messages at what he believed to be claimant's number. When claimant was laid off, he cancelled his cell phone service. Employer had his home number but no messages were left at that number and no written offer was made. Claimant has been reporting his gross weekly wages for partial employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes no offer of work was actually communicated to claimant.

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.

If employer is unable to make personal contact to extend an offer of work, a written offer with sufficient detail may be sent by certified mail with return receipt requested. Since no offer of work was actually made, benefits are allowed.

DECISION:

The September 28, 2009, reference 02, decision is affirmed. Employer did not communicate an offer of work to claimant. Benefits are allowed, provided claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw