

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY L HOVEY
Claimant

APPEAL NO. 12A-UI-00039-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHADE TREE SERVICE CO
Employer

OC: 11/20/11
Claimant: Respondent (1)

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 20, 2011, reference 01, that concluded he was not subject to disqualification for failing to accept work. A telephone hearing was held on January 31, 2012. The claimant participated in the hearing. Jeff Baker participated in the hearing on behalf of the employer with a witness, Philip Siegfried. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show he filed a new claim for benefits effective November 20, 2011. His average weekly wage based on his high quarter of earnings in his base period was \$721.55 (\$18.04 per hour). If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer from February 2010 to October 19, 2011, when he was laid off. He was working full-time as a foreman at a rate of pay of \$19.23 per hour when he was laid off, with a \$35.00 per diem for travel expenses.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 20, 2011. His average weekly wage based on his high quarter of wages in his base period was \$721.55 (\$18.04 per hour).

On November 23, 2011, the general supervisor, Philip Siegfried, offered the claimant a job working as a top trimmer in the Cedar Rapids area. The job was full-time and paid \$17.32 per hour, with a \$55.00 per diem for travel expenses. The claimant declined the job because he did not think he could cover his expenses with the rate of pay and per diem. Previously, he had two other employees that he traveled with and shared expenses; but, at the time of the offer, these

employees had found other jobs. The claimant did not have any other definite prospects of re-employment when he declined the job.

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 rules state the wage formula of Iowa Code § 96.5-3-a is based on the number of weeks that have elapsed following the effective date of the most recent new or additional claim filed by the claimant. 871 IAC 24.24(15)i.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he was offered a job as a top trimmer, not as a foreman. Although he was not told, he was aware that the rate of pay was \$17.32 per hour. The offer of work was made within the first five weeks of the claimant's unemployment. The wages offered, therefore, were not suitable as a matter of law, because the wage formula of wage formula of Iowa Code § 96.5-3-a required a wage rate of not less than \$18.04 per hour and the claimant cannot be disqualified.

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. Since the work offered did not meet the standard for suitability, the claimant's failure to accept the job is not evidence that the claimant is not able to and available for work. The preponderance of the evidence shows the claimant is able to and available for work.

DECISION:

The unemployment insurance decision dated December 20, 2011, reference 01, is affirmed. 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw