

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOWARD E SIVER**

Claimant

**APPEAL NO. 11A-UI-14439-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAGEE CONSTRUCTION COMPANY**

Employer

**OC: 04/03/11**

**Claimant: Respondent (4-R)**

Section 96.4(3) – Able & Available

Section 96.4(4) – Work Refusal

Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 31, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 30, 2011. Claimant participated. Wayne Magee represented the employer. The administrative law judge took official notice of the agency's administrative record (DBRO) of the effective date of the additional claim for benefits, the benefits disbursed to the claimant, and the claimant's average weekly wage during the base period.

**ISSUES:**

Whether the claimant has been able to work and available for work since October 12, 2011.

Whether the claimant refused an offer of suitable employment on October 12, 2011.

Whether the claimant has been overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is a journeyman ironworker. The claimant is part of a trade union and gets work through the union local. The claimant last performed work for the employer on April 4, 2011, at which time he was laid off. The claimant had performed work at a John Deere facility in Waterloo.

On October 12, 2011, the employer contacted the claimant directly by telephone to recall him to the employment. Claimant understood that the employer wanted him to return to the same work under the same conditions as had existed before the layoff. Though the claimant knew that the employer was supposed to direct the recall to the union hall, the claimant did not mention this to the employer during the telephone call on October 12. The reason the claimant did not mention this, was because the claimant was not available for work. During the call on October 12, 2011, the claimant offered a series of reasons why he could not return to the employment. These included that he was insulating an attic, that he was in the midst of financial transactions designed to assist his in-laws, and that he had retired. The claimant had in fact retired through the union local in order to access the annuity he

intended to use to assist his in-laws. Upon retiring, the claimant could work no more than 480 hours per year through the union hall.

The claimant's decision to retire through the union hall and the claimant's decision not to accept work through the employer had nothing to do with union seniority or bumping rights.

The claimant received unemployment insurance benefits that included \$3,008.00 in benefits for the benefit week ending October 15, 2011 through the benefit week that ended December 3, 2011.

## **REASONING AND CONCLUSIONS OF LAW:**

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns ten times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code section 24.24(1)(a) provides as follows:

24.24(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.*

[Emphasis added.]

The claimant asserts a technicality as the basis for his argument that there was not an offer of employment. The claimant asserts there was no offer because the employer did not go through the union hall. The above administrative rule imposes no such requirement on the employer as a prerequisite to a finding that there has been an offer of employment. The weight of the evidence indicates that the employer made a bona fide offer to return the claimant to his prior employment under the same conditions as had existed before the layoff. The claimant made no mention to the employer, at the time of the offer, the claimant believed the offer defective because the employer was contacting him directly rather than going to the union hall. The weight of the evidence indicates the claimant clearly understood that the employer was attempting to recall him to work. The weight of the evidence indicates that, had the claimant actually been available for work, the parties could easily have informed the union hall to effect the recall. The claimant did not want to be recalled because he was not available for work and contacted the union hall only to arm himself with a further excuse for not accepting recall.

Iowa Administrative Code rule 871 IAC 24.24(4) states as follows:

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 .... If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept 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 Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Administrative Code rule 871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

24.23(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

The claimant made himself unavailable for work effective the benefit week that ended October 15, 2011 and continued to be unavailable for work at the time of the November 30, 2011 appeal hearing. The claimant hindered his availability to work full-time hours in his usual occupation by going through the process of retiring, which then limited him to working no more than 480 hours a year in his usual occupation. The claimant made himself unavailable for work with this employer, who had actual work available for the claimant. The claimant made himself unavailable for work by giving priority to various personal matters that interfered with his work availability. The claimant was not available for

work, and was not eligible for unemployment insurance benefits, effective the benefit week that ended October 15, 2011. The availability disqualification continued as the November 30, 2011 appeal hearing. Thus, the disqualification continued at least through the benefit week that ended December 3, 2011.

This matter will be remanded to the Claims Division for determination of the claimant's work availability effective December 4, 2011.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant was overpaid \$3,008.00 benefits for the benefit week ending October 15, 2011 through the benefit week that ended December 3, 2011.

**DECISION:**

The Agency representative's October 31, 2011, reference 01, decision is modified as follows. The claimant refused an offer of suitable employment on October 12, 2011 at a time when he was not available for work. The claimant was not available for work and ineligible for unemployment insurance benefits effective the benefit week that ended October 15, 2011. The availability disqualification continued at least through the benefit week that ended December 3, 2011. Claimant was overpaid \$3,008.00 benefits for the benefit week ending October 15, 2011 through the benefit week that ended December 3, 2011.

This matter will be remanded to the Claims Division for determination of the claimant's work availability effective December 4, 2011.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw