

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH E DUNN
Claimant

OKOBOJI BARZ INC
Employer

APPEAL 18A-UI-12026-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/18/18
Claimant: Respondent (1R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the December 10, 2018, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 3, 2019. Claimant did not register for the hearing and did not participate. Employer participated through food and beverage manager Millisa Reynolds.

ISSUE:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer operates several different businesses in Okoboji, Iowa. Claimant was hired to work as the head chef in one of employer's restaurants. When the restaurant closed for the season, employer offered claimant work in other restaurants or cleaning boats. On approximately November 8, 2018, claimant was separated from employment.

The Benefits Bureau of Iowa Workforce Development has not issued a decision on whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

Cases of "refusal of suitable work without good cause" are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was made and that it was suitable. Iowa Code § 96.5(3)a(1) provides:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, no offer of work was made as claimant was still connected to employer. Claimant was not refusing work as the term is defined by Employment Security Law. Claimant declined a work assignment and was separated from employment. The Benefits Bureau of Iowa Workforce Development has not issued a decision on whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits.

DECISION:

The December 10, 2018, (reference 02) decision is affirmed. Employer did not communicate an offer of work to claimant. Benefits are allowed at this time.

REMAND:

This matter is remanded to the Benefits Bureau of the Iowa Workforce Development for an initial investigation and determination on whether claimant's separation from work on November 8, 2018, disqualifies him from receiving unemployment insurance benefits.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn