

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTISS R JONES
Claimant

APPEAL NO. 12A-UI-08935-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINTER LANDSCAPING AND TREE
SERVICE**
Employer

**OC: 11/06/11
Claimant: Respondent (2-R)**

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Pinter Landscaping and Tree Service filed a timely appeal from a representative's decision dated July 18, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that no offer of work was actually made to the claimant on April 9, 2012. After due notice was provided, a telephone hearing was held on August 30, 2012. Although the claimant was duly notified, he did not respond to the notice of hearing and did not participate. The employer participated by Mr. Shane Pinter, Company Owner, and Ms. Pat Pinter, Office Manager.

ISSUE:

The issue is whether the claimant refused a bona fide offer of suitable work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Curtiss Jones was employed by Pinter Landscaping and Tree Service from April 8, 2011 until he was seasonally laid off on November 16, 2011. Mr. Jones had worked as a landscaping laborer and was paid by the hour.

On April 9, 2012, Shane Pinter, the company owner, had a personal telephone conversation with Curtiss Jones. At that time Mr. Pinter specifically offered Mr. Jones his regular job at his regular hours and pay and the offer was declined by Mr. Jones. In an effort to provide the employment that was acceptable to Mr. Jones, the employer then made a counter offer allowing Mr. Jones to work the hours that he indicated were agreeable. Mr. Jones declined that offer as well.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse a bona fide offer of suitable work.

Iowa Code section 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.

871 IAC 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.

The evidence in the record establishes that a bona fide offer of suitable work was made to Curtiss Jones on April 9, 2012, that the offer of work was suitable and that the claimant declined the offer. As the claimant did not have a good cause reason for the refusal, the administrative law judge concludes that the claimant refused a bona fide offer of suitable work without good cause and is ineligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated July 18, 2012, reference 01, is reversed. Claimant refused a bona fide offer of suitable work without good cause. Benefits are denied effective April 9, 2012. Claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs