

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL E GIBSON

Claimant

APPEAL NO: 13A-UI-03432-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARNES PAINTING COMPANY

Employer

OC: 02/17/13

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal
Section 17A.12-3 – Non-appearance of Party
871 IAC 25.8(5) – Decision on the Record
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

Barnes Painting Company (employer) appealed a representative's March 20, 2013 decision (reference 01) that concluded Randall E. Gibson (claimant) was qualified to receive unemployment insurance benefits. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 8:30 a.m. on April 24, 2013. The employer/appellant failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. The administrative law judge considered the record was closed at 8:40 a.m. At 8:49 a.m., the employer called the Appeals Section and requested that the record be reopened. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The employer/appellant received the hearing notice prior to the April 24, 2013 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the employer directly contacted the Appeals Section was on April 24, 2013, 19 minutes after the scheduled start time for the hearing. The employer had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

The claimant has worked for the employer on a seasonal basis since about 1981. Most recently, he worked through on or about February 2, 2013. At that time he was laid off for lack of work. He established an unemployment insurance benefit year effective February 17, 2013,

and filed a weekly claim and received benefits for the week ending February 23. As of the date of the hearing he has not filed any weekly claims since the week ending February 23.

The employer heard from the claimant's brother that the claimant had had a bike accident and broke some ribs so that he would not have been able to return to work on February 25, the date the employer had intended to recall the claimant for work. However, the employer did not speak directly to the claimant to confirm this and did not send him a letter to recall him to work; the employer "assumed he was unable to work because of what his brother told me."

REASONING AND CONCLUSIONS OF LAW:

The Iowa Administrative Procedures Act § 17A.12-3 provides in pertinent part:

If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and make a decision in the absence of the party. ... If a decision is rendered against a party who failed to appear for the hearing and the presiding officer is timely requested by that party to vacate the decision for good cause, the time for initiating a further appeal is stayed pending a determination by the presiding officer to grant or deny the request. If adequate reasons are provided showing good cause for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If adequate reasons are not provided showing good cause for the party's failure to appear, the presiding officer shall deny the motion to vacate.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The primary issue in this case is whether the claimant should be disqualified for refusing a suitable offer of work. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if he has failed without good cause to accept suitable work when offered. However, applying this statute, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant.

In this case, there was no bona fide offer of work and no definite refusal of work after the layoff from employment. Benefits are allowed, if the claimant is otherwise eligible.

The employer's appeal raised a question as to whether the claimant was able and available for work, regardless as to whether the employer had made a bona fide offer or recall for work. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3; 871 IAC 24.22(2)h. However, as the able and available determinations are made on a weekly basis, and the claimant has not made any weekly claims for unemployment insurance benefits after the week ending February 23, 2013, the issue as to whether the claimant was sufficiently unable to work due to having had an accident to be ineligible to receive unemployment insurance benefits is moot.

DECISION:

The representative's March 20, 2013 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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