

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J WALLACE
Claimant

APPEAL NO. 09A-UI-05882-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WOLF CONSTRUCTION COMMERCIAL INC
Employer

OC: 01-18-09
Claimant: Respondent (4)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.4-6-a – Department Approved Training
871 IAC 24.39(2) – Department Approved Training – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 7, 2009, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on May 13, 2009. The claimant did participate. The employer did participate through Jody Claussen, Human Resources Manager.

ISSUE:

Did the claimant refuse a suitable offer of work and is he able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a carpenter full time beginning July 27, 2006 through January 9, 2009 when he was laid off due to lack of work. On February 16, Jody Claussen notified the claimant that he was being called back to work at his same job at his same rate of pay effective March 9, 2009. The claimant refused to return to work because he had determined to attend school to learn a new trade. Claimant has been granted Department Approved Training (DAT) status.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

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. 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.

Iowa Code § 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

The offer was suitable as it was a recall to the claimant's previous position at the same hours and wages. The claimant did have a good-cause reason for the refusal as he is not able to and available for work because he is in school on DAT status. Thus, benefits are allowed and the able and available requirement is waived due to claimant's DAT status pursuant to 871 IAC 24.39(2). The employer's account shall not be charged for benefits paid during the claimant's eligibility for DAT.

DECISION:

The April 7, 2009, reference 04, decision is modified in favor of the appellant. Claimant did refuse a suitable offer of work. Benefits are allowed. Employer's account shall not be charged for benefits paid during claimant's eligibility for DAT.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css