

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SETH M ZIMMERMANN

Claimant

APPEAL NO. 14A-UI-05432-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONALD R SCHNURR ET AL

Employer

OC: 12/01/03

Claimant: Respondent (4)

Section 96.4-3 – Availability for Work
871 IAC 23.43(4) – Supplemental Employment
Section 96.5-3-a – Failure to Accept Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 20, 2014, reference 01, that concluded the claimant was eligible for unemployment insurance benefits because he was working part time when work was available and the employer was chargeable for benefits paid. A telephone hearing was held on June 17, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Murray Stanley participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant failed to accept suitable work could be decided even though it was not listed on the hearing notice.

ISSUES:

Is the claimant eligible for partial unemployment insurance benefits?

Is the claimant able to and available for work?

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant filed for unemployment insurance benefits effective December 1, 2013, after his full-time employment with Brokaw Supply Company LLC ended. The claimant's base period was from July 1, 2012, through June 30, 2013. His average weekly wage based on the highest quarter of wages in his base period was \$1,037.

The claimant accepted a job working for the employer as a tax preparer in February 2014. At the end of April, after the tax season ended, the employer offered the claimant a full-time job doing accounting work for \$25,000 per year salary. He declined the job due to the low rate of pay in comparison with his prior salary with Brokaw Supply Company LLC. He agreed to continue to work part time for the employer. He continues to seek full-time suitable work, which would be hampered by working full time for the employer.

The claimant filed an additional claim for benefits effective April 27, 2014. He has accurately reported his wages on his weekly claims since that time. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant is able to and available for work. Iowa Code § 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.

The claimant is able to and available for work. He filed for benefits because his regular employer laid him off and his supplemental employment as for the employer does not disqualify him from receiving unemployment insurance benefits.

This case is governed by 871 IAC 23.43(4)a, which deals with a situation where an individual has supplemental employment in addition to his regular employment.

(4) Supplemental employment.

a. An individual, who has been separated with cause attributable to the regular employer and who remains in the employ of the individual's part-time . . . employer, continues to be eligible for benefits as long as the individual is receiving the same employment from the part-time employer that the individual received during the base period. The part-time employer's account may be relieved of benefit charges....

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The work offered to the claimant at the end of April 2014 does not meet the wage standards of the law. The wage offered was half of what the claimant was paid in his prior job. No disqualification is warranted in this case.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges to the employer's account will be determined by the circumstances at that time.

DECISION:

The unemployment insurance decision dated May 20, 2014, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. If the employer becomes a base period employer in a future benefit year, charges to the employer's account will be determined by the circumstances at that time, but it is not currently chargeable for any benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css