

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMES A PETRICK
Claimant

APPEAL NO. 19A-UI-04404-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-1 DISPOSAL SERVICE INC
Employer

OC: 05/05/19
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

A-1 Disposal Service (employer) appealed a representative's May 24, 2019, decision (reference 01) that concluded James Petrick (claimant) was eligible to receive unemployment insurance benefits because there was no offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2019. The claimant participated personally. The employer participated by Mark Happel, Shop Foreman.

ISSUE:

The issue is whether the claimant refused an offer of suitable work and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer multiple times. He most recently worked for the employer from May 28, 2017, to April 26, 2019, as a full-time driver. The claimant worked reduced hours starting October 1, 2018, to care for his ailing mother. As his mother's health improved, the claimant offered to return to work but the employer had no work the claimant could physically perform. On April 29, 2019, the employer offered the claimant work that was too strenuous for the claimant and he refused. The claimant filed his claim for unemployment insurance benefits on May 5, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not refuse an offer of suitable work.

Iowa Code section 96.5(3)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (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.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The offer of work was made by the employer to the claimant on April 29, 2019. The claimant filed his claim for benefits on May 5, 2019. The claimant refused work before he had a claim for unemployment insurance benefits on file. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused. The claimant is qualified to receive benefits provided he is otherwise eligible.

Iowa Code section 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. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). There was no evidence that there were any restriction or limitation on employability. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 24, 2019, decision (reference 01) is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs