

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAYCOB R WEBER**

Claimant

**APPEAL NO. 15A-UI-05376-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARL SCHULER MASONRY CONSTR CO**

Employer

**OC: 04/05/15**

**Claimant: Respondent (2R)**

Section 96.5-3-a – Work Refusal

Section 96.3-7 – Recovery of Overpayment of Benefits

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 29, 2015, reference 01, which held claimant eligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2015. Claimant participated personally. Employer participated by Steve Schuler. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits One through Four were admitted into evidence.

**ISSUES:**

Whether claimant refused to accept a suitable offer of work?

Whether claimant is overpaid unemployment insurance benefits?

Whether 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: As employer was the only participant in the hearing, all findings of fact are gleaned from employer's testimony. Employer made an offer of work to the claimant on April 15, 2015. That offer included the following terms: Claimant was to be paid at the same wage he had received prior to leaving work for military training, and work the same hours at the same job. Claimant's wages were determined as a percentage of union scale based on claimant's training and total hours worked. Claimant's hourly wage was \$15.50/ hr. Claimant's average weekly wage is \$653.19. The offer was made in the second week of unemployment. Claimant refused the offer of work.

## REASONING AND CONCLUSIONS OF LAW:

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 § 96.3-7, 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.

Iowa Admin. Code r. 871-24.24(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.

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.

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. 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".

For the reasons that follow, the administrative law judge concludes claimant did refuse a suitable offer of work. Claimant was offered work by his previous employer at the same wages, for the same hours, and doing the same job where claimant had previously been employed. As claimant refused suitable work at the time offered he is deemed not to be able and available for work.

As claimant did not participate in this hearing, the matter of the amount of overpayment will be remanded to the finder of fact to determine.

**DECISION:**

The decision of the representative dated April 29, 2015, reference 01 is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issue of amount of overpayment is remanded to the fact finder.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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