

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEAL T FOBIAN
Claimant

APPEAL NO: 11O-UI-00713-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L T LEON ASSOCIATES
Employer

OC: 01/17/10
Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Refusal of Offer of Suitable Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 22, 2010 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A hearing was held before another administrative law judge in October 2010. In a November 2 decision, the administrative law judge affirmed the July 22, 2010 determination.

The claimant appealed the November 1 decision to the Employment Appeal Board. The Employment Appeal Board modified the decision by holding the claimant was only disqualified from receiving until May 31, 2010, or the end of his initial 90-day contract. The Employment Appeals Board remanded the issue of whether the claimant refused the employer's May 16 offer of work without good cause to the Appeals Section for a hearing on this issue.

A hearing was scheduled for the new issue. The claimant and his attorney, Christopher Rottler, participated in the hearing. Luis Leon, the president, appeared on the employer's behalf. Based on the administrative record, the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits as of June 6, 2010.

ISSUE:

Was the employer's May 16 offer of full-time work suitable for the claimant?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 17, 2010. The claimant's base period on this claim is October 1, 2008 through September 30, 2009. The wages in the claimant's high quarter equal \$19,792.00.

The employer initially hired the claimant as a civil engineer for three months. The claimant began working for the employer on March 1, 2010. Until the employer established an office, the employer allowed the claimant to work remotely from his home in Ames. On May 16, 2010, the employer sent the claimant an email offering him full-time employment with paid holidays,

vacation and PTO. The employer informed the claimant the offer of full-time employment did not include an increase in his salary, which was \$33.00 an hour. When the employer sent the offer of work to the claimant, Lewis knew the claimant would not accept the job if he was not offered more money to commute to Des Moines.

On May 17, the claimant and employer talked about the employer's offer. The claimant informed the employer he would not accept the offer of full-time employment because the employer had not increased his wages. The employer's offer of work was for the same work and wages the claimant had been doing since March 1, 2010. The changes in the full-time contract included working from Des Moines, paid holidays, vacation and PTO.

As of June 6, the claimant reopened his claim and starting filing weekly claims.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work. Iowa Code § 96.5(3)a. One of the factors in determining whether an offer of work is suitable is if the gross weekly wages for the work equal or exceed 100 percent of the claimant's average weekly wage paid to him during the highest quarter of his base period when work is offered during the first five weeks of unemployment. Iowa Code § 96.5(3)a(1).

In this case, the average weekly wage in the claimant's highest quarter of his base period is \$1,522.00. Even though the claimant testified that his average weekly wage was \$1,300.00, the wage credits from his base period must be used to determine his average weekly wage from his high quarter. Since the employer offered the claimant \$1,320.00 a week, the employer's May 16 offer of full time employment cannot be considered suitable for the claimant. Therefore, the claimant is not disqualified from receiving benefits for declining to work full time for the employer in Des Moines. As of June 6, 2010, the claimant is qualified to receive benefits.

Based on the reasons for the claimant's employment separation, the employer's account will not be charged during the claimant's current benefit or if the employer becomes a base period employer.

DECISION:

The claimant declined the employer's May 16, 2010 offer of full time work. Since the employer's offer of work did not meet the guidelines to be considered suitable under the law for the claimant, he is qualified to receive benefits as of June 6, 2010. The employer's account will not be charged for any benefits the claimant has received or may receive.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css