BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JUSTIN R SCHRAEDER Claimant and **TMONE LLC** Employer	:	**HEARING NUMBER:** 19BUI-02909 **EMPLOYMENT APPEAL BOARD DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

After filing for benefits Justin Schraeder (Claimant) was offered a job with Tmone LLC (Employer). The Claimant misunderstood and thought he was going to make $10.70 during training and that his wage would go up thereafter. The hours were 40 hours per week. The Claimant was receiving unemployment benefits. The Claimant's average weekly wage on this claim was $586.92, and the offer was within the seventh week of unemployment. He was not required to accept work at less than 75% of his prior wage rate of $14.67 per hour for forty hours a week. Seventy-five percent of $14.67 is $11.

Claimant was anxious to get back to work so he agreed to work for Employer, and was anticipating that he would make more than the $10.70 once out of training. During the orientation for his new position he learned that he had misunderstood and would be making $10.70 an hour at least for the first three months. A number of others at the orientation had also been similarly confused because the Indeed.com posting had listed a higher wage. The Claimant then quit after a single day because this was not enough money.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3 provides:

> An individual shall be disqualified for benefits:
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> 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.
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> 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:
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> (a) One hundred percent, if the work is offered during the first five weeks of unemployment.
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> (b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
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> (c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
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> (d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.
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> (2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

"In order for work to be considered 'suitable' under section 96.5(3), it is mandatory that the gross weekly wages equal or exceed the statutorily prescribed percentages of base period wages. **If gross weekly wages for the work do not equal or exceed those sums, the work is unsuitable as a matter of law and the actual motive of a claimant in refusing the work is immaterial**." *Biltmore Enterprises, Inc. v. Iowa Dept. of Job Service*, 334 N.W.2d 284, 287 (Iowa 1983)(emphasis added). Thus it matters not why the Claimant turned down the work if the offer was insufficient.

The evidence is clear that the Claimant could have refused the offer since it did not meet the statutory suitability conditions of $11 per hour. Instead he went to orientation, realized that the offer could not work for him, and decided not to work for the Employer. Under the absolutely unique circumstances of this case we find this was a refusal of an offer which was not suitable.

This Claimant took a job because he thought it would pay more than it did. Had he refused a $11 per hour offer he would be disqualified for not accepting a suitable offer. But in reality the pay rate was to be under what the Claimant was required to accept. To punish a Claimant who took a job he didn't have to take, and who then immediately changes his mind is contrary to the purposes of the Employment Security Law. We emphasize that we are not formulating a general rule in this case. If a Claimant accepts and works at a job during a benefit year then any subsequent separation from that job for disqualifying reasons will indeed disqualify him. We are not ruling that job loss from a less-than-suitable job gets a free pass. We are saying that here the Claimant's action did not constitute a refusal of work. Had he taken even a little bit longer in leaving we would not say this, and a disqualifying separation would be disqualifying. But here a less-than-suitable offer was made, there was confusion over the amount of pay, and *within a day* the Claimant decided not to take it, having only been at *orientation*. We think this is close enough in time to the initial acceptance of the offer to constitute a refusal of work. This is especially the case where the amount the Claimant thought was offered would meet minimum requirements to be suitable, but the amount the offer really was did not meet the minimum requirements for suitability. As the offer was not suitable benefits are allowed.

DECISION:

The administrative law judge's decision dated April 29, 2019 is **REVERSED**. The Employment Appeal Board concludes that the Claimant did not refuse suitable work. The Claimant is not disqualified by a separation from this Employer. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible. The overpayment entered against Claimant in the amount of $ $2,644.00 is vacated and set aside.

The Employer is not a base period employer on this claim and so cannot be charged for benefits. We also expressly rule that if the Claimant files a subsequent claim for which February 25, 2019 falls in the base period then the Employer also **will not be charged** on that claim. The Employer should retain a copy of our decision so that it can make this point with Iowa Workforce should in the future receive a statement of charges that includes benefits paid to this Claimant.

The Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly none of

the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv