

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH M FUNARO**  
Claimant

**APPEAL NO. 09A-UI-01167-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MORRELL COMPANY LC**  
Employer

**OC: 12/21/08 R: 02  
Claimant: Respondent (4)**

Section 96.5-3-a - Failure to Accept Suitable Work  
Section 96.3-7 - Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 23, 2009, reference 01, that concluded the claimant was not subject to disqualification for refusing work. A telephone hearing was held on February 9, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Anthony Sherman participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant fail to accept an offer of suitable work without good cause?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked as a field employee for the employer from December 2007 to December 21, 2008, when he was temporarily laid off by the employer. Anthony Sherman, the project engineer, was the claimant's supervisor.

On about January 2 and 12, 2009, Sherman called the claimant's cell phone number and left messages asking the claimant to return the call because there was work available. The claimant did not receive the message and was unaware that Sherman had called.

The claimant called Sherman somewhere around the end of the January 2009. Sherman indicated that the employer had work available. The claimant would have been able to return to full-time work under the same terms and conditions as his previous employment. The claimant was upset that the employer had protested his unemployment insurance claim and told Sherman he was not interested in working for the employer again.

The claimant filed for and received a total of \$375.00 in unemployment insurance benefits for the week ending February 7, 2009.

## REASONING AND CONCLUSIONS OF LAW:

The 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 section 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 rules state that an offer of work must be made by personal contact and a definite refusal must have been made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact under the rules. 871 IAC 24.24(1)a. Leaving a message on voice mail does not satisfy this requirement.

The claimant, however, did fail to accept a bona fide offer of work made during the phone call at the end of January 2009. The work offered was suitable since it was identical to what the claimant was doing before. The claimant's being upset that the employer had protested his claim does not establish good cause for failing to accept the work offered.

Neither party was able to pinpoint the date the offer was made but they agreed it was at the end of January. Consequently, I conclude the claimant is disqualified from receiving unemployment insurance benefits effective February 1, 2009.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. Iowa Code section 96.3-7.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$375.00 in benefits for the week ending February 7, 2009.

**DECISION:**

The unemployment insurance decision dated January 23, 2009, reference 01, is modified in favor of the employer. The claimant is disqualified from receiving unemployment insurance benefits effective February 1, 2009, and continuing until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$375.00 in unemployment insurance benefits, which must be repaid.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs