

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JACOB C HEINZ
Claimant

APPEAL NO. 19A-UI-02741-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WIESE INDUSTRIES INC
Employer

OC: 01/20/19
Claimant: Appellant (3R)

Iowa Code Section 96.5(3)(a) – Work Refusal
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jacob Heinz filed a timely appeal from the March 25, 2019, reference 03, decision that disqualified him for benefits, based on the deputy's conclusion that Mr. Heinz refused an offer of suitable work on March 1, 2019 without good cause. After due notice was issued, a hearing was held on April 18, 2019. Mr. Heinz participated. Donna James represented the employer and presented additional testimony through Gary Meyer. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and WAGE-A. The administrative law judge left the record open until April 19, 2019 for the sole purpose of allowing Mr. Heinz opportunity to submit his work search log. On April 19, 2019, Mr. Heinz submitted a work search log that the administrative law judge received into evidence as Exhibit B.

ISSUES:

Whether the claimant refused an offer of suitable work on or about March 1, 2019 without good cause.

Whether the claimant has been able to work and available for work since February 24, 2019.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jacob Heinz established an original claim for benefits that was effective January 20, 2019. Mr. Heinz has continued his claim since then by making consecutive weekly claims. Mr. Heinz's highest earning base period quarter was the second quarter of 2018, during which quarter Mr. Heinz received wages totaling \$10,961.54. The quarterly wages translate to an average weekly wage of \$843.20. Seventy-five percent of the average weekly wage for that quarter would be \$632.40.

On March 1, 2019, Mr. Heinz refused an offer of employment from Wiese Industries, Inc. The work refusal fell within the benefit week of February 24, 2019 through March 2, 2019. That week was the sixth week of Mr. Heinz continued claim. Mr. Heinz had not previously been

employed by Wiese Industries. Mr. Heinz had applied for and interviewed for a full-time Customer Service Representative opening at Wiese. On March 1, Gary Meyer, Wiese Industries Customer Service/Sales Manager offered Mr. Heinz a full-time, Customer Service Representative position. Mr. Meyer offered Mr. Heinz a starting wage of \$18.00 per hour. The starting wage would translate to weekly wages of \$720.00. Mr. Meyer told Mr. Heinz that the work hours would be 8:00 a.m. to 5:00 p.m., Monday through Friday, and that the work would be performed at the employer's office in Perry. Mr. Meyer told Mr. Heinz that the work would involve answering phones, dealing with customers and in-putting orders. Mr. Meyer had earlier told Mr. Heinz that Mr. Meyer was past retirement age, that Mr. Meyer was looking for his replacement, that there could be opportunity for Mr. Heinz to grow his career within the company. Mr. Heinz told Mr. Meyer that he was declining the offer of employment based on the pay.

Mr. Heinz was also concerned that the Customer Service Representative position Wiese Industries offered on March 1, 2019 was a significant step down from his most recently held position. At the time Mr. Heinz established the original claim for benefits that was effective January 20, 2019, Mr. Heinz had most recently been employed by Dallas Mutual Insurance Association. Mr. Heinz had started with Dallas Mutual in April 2017. Prior to Mr. Heinz January 2019 separation from Dallas Mutual, he had recently been promoted to the position of Insurance Assistant Manager. Effective January 1, 2018, Dallas Mutual had increased Mr. Heinz pay from \$40,000.00 annually to \$42,000.00 annually. In February 2018, Dallas Mutual enacted an across the board increase that further boosted Mr. Heinz's pay. In September 2018, Dallas Mutual provided Mr. Heinz with his final wage increase in connection with his promotion to the Insurance Assistant Manager position. The final wage increase took Mr. Heinz's pay to \$48,000.00 annually. As an assistant manager, Mr. Heinz exercised decision-making authority and performed policy underwriting. Though Mr. Heinz had a high regard for Wiese Industries, he viewed the offered position as essentially data-entry and not the position he thought it would be at the time he applied for it.

Though the commuting distance was not a factor in Mr. Heinz's decision to decline the position offered by Wiese Industries, there was a difference in the commuting distance between Mr. Heinz's previous employment and the proposed Wiese employment. Mr. Wiese has at all relevant times resided in Grimes. When Mr. Heinz worked for Dallas Mutual, he commuted about 10 miles to Dallas Center. The commute from Grimes to the Wiese Industries facility in Perry would be 20 miles or 30 minutes.

Mr. Heinz's ability to work and availability for work for the relevant period has been as follows. Mr. Heinz has at all relevant times been mentally and physically able to perform full-time work. During that benefit week that ended March 2, 2019, Mr. Heinz demonstrated that he was available for work by making two employer contacts beyond the offer and refusal discussion with Wiese Industries. During that week, Mr. Heinz sent a resume to one employer for a production technician position and completed an online application for another for a lab technician position. However, for each of the three benefit weeks between March 3, 2019 and March 23, 2019, Mr. Heinz did not document any work search activities. During the benefit week that ended March 30, 2019, Mr. Heinz documented only one job contact. For the benefit weeks that ended April 6, 2019 and April 13, 2019, Mr. Heinz documented two job contacts per week. The types of positions Mr. Heinz has applied for since establishing his claim for benefits include the following: Ag Junior Underwriter, Office Assistant, Seed Supply Administrator, Order/Customer Service, Production Senior Associate, Farm Hand Equipment Operator, Production Technician, Ag Lab Tech, Loss Control Specialist—Ag, Grain Marketing—Entry, Processor—Farm, and Agribusiness Underwriting Tech.

Mr. Heinz has recently embarked on a farming endeavor that could potentially impact on his availability for “insured” work. Beginning on or about February 26, 2019, Mr. Heinz commenced dedicating 20 to 24 hour per week to a crop share arrangement he entered into with his grandfather. That endeavor involves farming 49 acres. Mr. Heinz indicates that in the event he accepts new employment, he would be able to shift his farm work to evenings and weekends.

REASONING AND CONCLUSIONS OF LAW:

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(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(15) provides as follows:

(15) Suitable work. In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

- a. Any risk to the health, safety and morals of the individual.
- b. The individual's physical fitness.
- c. Prior training.
- d. Length of unemployment.
- e. Prospects for securing local work by the individual.
- f. The individual's customary occupation.
- g. Distance from the available work.
- h. Whether the work offered is for wages equal to or above the federal or state minimum wage, whichever is higher.
- i. Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.
- j. Whether the position offered is due directly to a strike, lockout, or other labor dispute.
- k. Whether the wages, hours or other conditions of employment are less favorable for similar work in the locality.
- l. Whether the individual would be required to join or resign from a labor organization

Iowa Admin. Code r. 871-24.24(2)(a) provides as follows:

a. The job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable

Iowa Admin. Code r. 871-24.24(3) provides as follows:

(3) Each case decided on its own merits. Based upon the facts found by the department through investigation it shall then be determined whether the work was suitable and whether the claimant has good cause for refusal. Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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 Admin. Code r. 871-24.24(10) provides as follows:

(10) Distance to new job. Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant new job site shall not be reason for a refusal disqualification.

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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good

cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence in the record establishes that on March 1, 2019, Mr. Heinz refused an offer of suitable work without good cause. Wiese Industries made a bona fide offer of employment through direct telephone contact with Mr. Heinz. Both the offer and the refusal occurred during the benefit week that ended March 2, 2019. Because Mr. Heinz demonstrated that he was otherwise able to work and available for work that week by making two employer contacts, he would not be disqualified for benefits for that week for failure to meet those requirements. Mr. Heinz cites two reasons for refusing the work offer. Mr. Heinz mentioned only one of those reasons to Wiese Industries Customer Service/Sale Manager Gary Meyer. The stated reason for refusing the employment was pay. However, given that the offer and refusal fell during the sixth week of Mr. Heinz's unemployment insurance claim, the pay was suitable within the meaning of the unemployment insurance law. To be suitable the pay need only have been \$632.40 or 75% of Mr. Heinz's average weekly wage during his highest earning base period quarter. The pay offered by Wiese Industries amounted to \$720.00 per week. Mr. Heinz's second reason for refusing Wiese's offer of employment was that he did not believe the type of work offered was suitable when compared to his most recent position as Insurance Assistant Manager at Dallas Mutual. However, Mr. Heinz had been in the Assistant Manager position only a brief period prior to separating from Dallas Mutual. The position offered by Wiese Industries was within Mr. Heinz's capabilities and offered a similar level of responsibility and prestige as Mr. Heinz's other work for Dallas Mutual and the other positions Mr. Heinz targeted as part of his job search. There was no factor about the work offered by Wiese Industries that made the work unsuitable. Mr. Heinz did not have good cause to refuse the offer of suitable work.

Based on Mr. Heinz's refusal of suitable work on March 1, 2019 without good cause, Mr. Heinz is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Heinz must meet all other eligibility requirements. Because the work refusal occurred during the benefit week that began on February 24, 2019, the disqualification is effective February 24, 2019.

The administrative law judge has already addressed Mr. Heinz's ability to work since the start of his claim and his availability for work during the benefit week that ended March 2, 2019. The administrative law judge will now address Mr. Heinz's availability for work for the six-week period of March 3, 2019 through April 13, 2019. Based on Mr. Heinz's lack of a documented work searches for the three weeks between March 3, 2019 and March 23, 2019, Mr. Heinz failed to demonstrate he was available for work during those weeks. Based on Mr. Heinz's documentation of only a single employer job contact during the benefit week that ended March 30, 2019, Mr. Heinz failed to demonstrate he was available for work during that week. Based on the availability issue, Mr. Heinz would not be eligible for benefits for the four-weeks between March 3, 2019 and March 30, 2019. Mr. Heinz met the work availability and work search requirements for the benefit weeks that ended April 6, 2019 and April 13, 2019.

DECISION:

The March 25, 2019, reference 03, decision is modified as follows. On March 1, 2019, the claimant refused an offer of suitable work without good cause. Based on the work refusal, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. Because the work refusal occurred during the benefit week that began February 24, 2019, the work refusal disqualification is effective February 24, 2019.

The claimant has been able to work since February 24, 2019. The claimant was available for work during the benefit week that ended March 2, 2019 and for the benefit weeks that ended April 6, 2019 and April 13, 2019. The claimant did not demonstrate availability for work and an active job search for benefits during the four weeks between March 3, 2019 and March 30, 2019 and therefore would be ineligible for benefits for those four weeks.

This matter is remanded to the Benefits Bureau for entry of an overpayment decision regarding the benefits the claimant received for the benefit week that ended March 2, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs