

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELDON D RONEY
Claimant

APPEAL NO. 12A-UI-11599-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

SILZER AUTOMOTIVE REPAIR INC
Employer

OC: 03/18/12
Claimant: Respondent (2-R)

Iowa Code § 96.5(3)a – Failure to Accept Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

Employer Silzer Automotive Repair, Inc. (Silzer) filed a timely appeal from the September 18, 2012 (reference 03) decision that allowed benefits. After due notice was issued, a hearing was held on October 31, 2012 in Des Moines, Iowa. Claimant Roney participated. Silzer participated through Owner Doug Silzer and was represented by Peter Sand, attorney at law. Employer's Exhibits 1 through 4 were received. The administrative law judge took judicial notice of the administrative record.

ISSUES:

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good cause reason?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roney was employed as a full-time mechanic at \$17.25 per hour with Silzer through March 26, 2012, when Silzer went to his home and instructed Roney's girlfriend to relay the message to Roney that he was discharged. (See, 12A-UI-04483-VST, aff'd by Emp't Appeal Bd. September 14, 2012, now before the District Court for Polk County.) Silzer sent Roney a written offer of employment by certified mail and the return receipt was signed on June 15, 2012. (Employer's Exhibit 2) The offer was open-ended and contained the same terms as the job he held before. (Employer's Exhibit 1) Roney did not respond to the offer in part because he did not like how Silzer spoke to his girlfriend when he told her to tell Roney to turn in his keys and pick up his tools. Roney felt "harassed" because Silzer stopped by his home on the day he called in sick. Silzer considered Roney his best technician but had ongoing concerns about Roney's attendance and cell phone distractions at work. Silzer had informally chastised Roney about allowing a former girlfriend to show up at work and become too physical at work. Silzer had only been to Roney's house one other time when he provided him a ride home. Silzer kept the job open for Roney until late August 2012.

Claimant received unemployment benefits after the separation on a claim with an effective date of March 18, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Roney failed to accept a suitable offer of work.

Iowa Code § 96.5-3-a & b provide:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 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.

On May 29, 2012, a bona fide offer of suitable work, comparable to his prior employment with Silzer, was communicated to Roney by letter received on June 15, 2012. Iowa Admin. Code r. 871-24.24(1)a. Roney did not make a definite refusal but did not respond to the offer. Iowa Admin. Code r. 871-24.24. The remaining question is then whether the failure to accept the work was for a good-cause reason. Iowa Admin. Code r. 871-24.24(3). The reason for Roney's failure to accept work was his belief that he had previously been discharged from employment and believed that Silzer harassed him and his girlfriend on the date of separation. An employee who has quit employment because of an intolerable work situation and who is again offered employment with that same employer has good cause for declining that offer of work if the conditions have not changed. Iowa Admin. Code r. 871-24.24(14). However, Roney did not quit his employment with Silzer Automotive for any reason, so this provision does not apply to his situation. His belief that Silzer harassed him by showing up at his home on the day he called in sick and spoke to his girlfriend to relay the message to him to turn in his keys does not qualify as a good-cause reason for not accepting the offer of suitable work. While Silzer's direct method of attempting to verify the reason for Roney's absence was out of apparent frustration at claimant's attendance history and might have been better handled by disciplinary counseling after the fact, it was not unreasonable and did not amount to harassment. Effective June 17, 2012, benefits are denied until he has earned ten times his weekly benefit amount in other employment.

The administrative law judge further concludes the claimant has been overpaid benefits.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

DECISION:

The September 18, 2012 (reference 03) decision is reversed. Claimant failed to accept a suitable offer of work. Benefits are withheld effective June 17, 2012 until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw