

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN B PRYOR
Claimant

APPEAL NO. 15A-UI-06478-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEMBLE DIGGING & DRAINAGE CORP
Employer

OC: 05/10/15
Claimant: Respondent (1)

Section 96.5-3a –Refusal of Suitable Work
871 IAC 24.24 (14) – Employment Offer from Former Employer

STATEMENT OF THE CASE:

Pemble Digging & Drainage Corporation filed a timely appeal from a representative's decision dated May 29, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that on March 20, 2015 no offer of work with Pemble Digging & Drainage Corporation was actually made.

After due notice was provided a telephone hearing held on July 15, 2015. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Mr. John Pemble, Company President.

ISSUE:

At issue is whether the claimant refused a bona fide offer to return to suitable work.

FINDINGS OF FACT:

Having considered all the evidence in the record the administrative law judge finds: Brian Pryor worked for Pemble Digging & Draining Corporation as a full-time seasonal heavy equipment operator/laborer and was paid by the hour. Mr. Pryor last worked for Pemble Digging and Draining Corporation in December 2014. The claimant was laid off at that time due to the seasonal nature of the claimant's work. Mr. Pryor was reminded at the time of the lay-off that he would be recalled in the spring when the weather conditions allow the company to resume work. Mr. Pryor indicated that it was his intention to return. The company also provided Mr. Pryor cell phone service so the employer could reach the claimant if needed.

On or about March 20, 2015, the Company President, John Pemble had made repeated attempts to contact Mr. Pryor by telephone and by text message. Mr. Pemble was unable to directly contact the claimant using those methods, but left messages for Mr. Pryor regarding his recall to his normal work that was taking place at that time. Mr. Pryor did not respond to any of the telephone messages or text messages left by the employer. Because the claimant had not responded to his recall, the employer hired a replacement at a later date.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Pryor refused to accept a recall to suitable work from his former employer.

Iowa Code § 96.5-3-b 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. 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.

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.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

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.

The evidence in the record establishes that Pemble Digging and Draining Corporation made repeated attempts on or near March 20, 2015 to recall Mr. Pryor to work in his usual occupation with the company. The employment offered was within the purview of Mr. Pryor's usual work occupation. The wages, hours and other conditions of the employment that the company wished to recall Mr. Pryor to were generally the same as the hours and paying conditions of his previous employment with the company and prevailing for similar work in the locality.

The administrative law judge thus concludes that the work that the company was attempting to recall Mr. Pryor to was suitable.

The next question before the administrative law judge is whether the evidence in the record establishes the employer made a bona fide offer of a recall to employment and that the claimant rejected the offer. It does not.

Although the evidence in the record establishes the employer made repeated attempts to contact Mr. Pryor to recall him to suitable work, the employer was unable to directly reach the claimant to recall him to work. 871 IAC 24.24 (1) requires that a bona fide offer of work must be made to the individual either by personal contact with the individual or in the alternative the offer of recall to work by the employer be made by "registered letter" and that the claimant refused to accept the offer of suitable work.

In the case at hand, although the employer made repeated attempts by telephone and text messaging to recall Mr. Pryor to work, the employer did not have personal contact with the claimant for purposes of the recall. Other means of attempting to recall such as leaving telephone messages and text messages is not deemed sufficient under 871 24.24 (1) of the Iowa Administrative Code which requires that a registered letter be sent to the person being recalled, if a personal contact could not be established.

For the reasons stated herein the administrative law judge concludes that the offer of recall made by the employer on or about March 20, 2015 was not a "bona fide recall to work because there was no personal contact with the claimant or it did not send the claimant a registered letter recalling him to his previous work.

DECISION:

The representative's decision dated May 29, 2015, reference 01 is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of the law. The claimant did not refuse an offer of suitable work as no bona fide offer of work had been made.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

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