

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS F CROW
Claimant

HUEGERICH CONSTRUCTION COMPANY
Employer

APPEAL 21A-UI-01874-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

On December 29, 2020, Huegerich Construction Company (employer) filed an appeal from the December 21, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Thomas F. Crow (claimant) voluntarily quit due to a change in his contract of hire. The parties were properly notified about the hearing held by telephone on February 25, 2021. The claimant participated personally. The employer participated through Erika Huegerich, Office Manager. The employer's Exhibits 1 through 3 were admitted into the record. During the hearing, the parties agreed to waive notice on the issue of whether the claimant refused a suitable offer of work.

ISSUES:

Did the claimant voluntarily quit employment with good cause attributable to the employer?
Did the claimant refuse a suitable offer of work?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Carpenter beginning on February 10, 2020. On each job site, the employer has local workers and traveling workers. During his job interview, the claimant told the employer that he was not able to work outside the Des Moines metro area due to his wife's health. The employer agreed and the claimant was hired. The job in Des Moines finished on or about October 13. The employer had work for the claimant in Mason City; however, the claimant elected to leave employment rather than work outside the Des Moines metro area.

The employer attempted to arrange a new job as a maintenance technician for the hotel that had just been built. The employer told the claimant he would receive the same hourly pay with

the hotel that he had been receiving with the employer. The claimant was to begin employment on October 16; however, the hotel manager told him on October 13 that he would be making approximately three dollars less an hour than he was making with the employer. The claimant declined the job. The claimant filed his claim for unemployment insurance benefits effective October 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer and he did not refuse a work while he had an active claim for unemployment insurance benefits. Therefore, benefits are allowed. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

- I. *Did the claimant voluntarily quit employment with good cause attributable to the employer?*

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual who interviewed and hired the claimant was offered. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The claimant has met the burden of proof to establish that he voluntarily quit with good cause attributable to the employer. The claimant was assigned to work in Mason City following his Des Moines metro job. However, the claimant was hired with the understanding that he would be unable to travel to different job sites due to his wife's health. The change to the claimant's work location was substantial, and the employer willfully breached of the agreed terms of the claimant's employment. Accordingly, benefits are allowed.

II. Did the claimant refuse a suitable offer of work?

Iowa Code § 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. 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(8) provides:

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

(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.

The work was offered and refused before October 25, when the claimant filed his initial claim for unemployment insurance benefits. Therefore, it cannot disqualify the claimant from receiving benefits. Benefits are allowed.

As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.

DECISION:

The December 21, 2020, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily quit employment with good cause attributable to the employer and he did not refuse an offer work that can disqualify him from receiving benefits. Benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issue of overpayment is moot and charges to the employer's account cannot be waived.



Stephanie R. Callahan
Administrative Law Judge

March 8, 2021
Decision Dated and Mailed

src/mh