

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JES D ROHRBAUGH
Claimant

J.A.K.'S PUPPIES INC
Employer

APPEAL 17A-UI-08858-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/16/17
Claimant: Appellant (1R)**

Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 21, 2017, (reference 06) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 18, 2017. The claimant participated personally. The employer participated through Jolyn Noethe, owner/president. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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?

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant previously worked for the employer as an over-the-road truck driver until April 2017 when he quit the employment (See Reference 04 decision). The employer made an offer of work to the claimant by way of written letter, which he received on July 20, 2017. That offer included the following terms: Full-time employment, as an over-the-road driver, beginning July 23, 2017, at \$800.00 per week, for the first two months, and then his pay would be reevaluated. The claimant previously earned \$1,000.00 per week from this employer but since he quit the employment, he would be treated as a new employee for wage purposes.

The claimant's average weekly wage is \$831.00. The offer was made in the fourteenth week of unemployment. Consequently, the wage offered must equal or exceed 70 percent of his average weekly wage. The wage offered in this case was \$800.00 per week, thus meeting the wage requirement. The claimant refused the offers stating he previously earned \$1,000.00 per week from this employer and was upset because his final paycheck had been retained due to damage he caused on the employer's vehicle.

At the start of the hearing, the claimant disclosed he was involved in a serious motorcycle accident on September 13, 2017, resulting in five ribs that were fractured or broken. He is currently under medical care and unable to perform work until he is released from employment, which he expects will be three to four weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the offer of work was not suitable, and the claimant failed to accept a suitable offer of work.

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(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.

Based on the evidence presented, the employer made a valid offer of suitable work to the claimant on July 20, 2017 via letter, to perform work as a full-time over-the-road truck driver, making \$800.00 per week for the first two months. The administrative law judge recognizes the pay offered may have been less than he previously earned with the employer, but that the wage offered meets the wage requirement pursuant to Iowa Code § 96.5(3)a, and the claimant has failed to establish a good cause reason not to return to this prior employer. Therefore the administrative law judge concludes the offer and claimant did not have a good cause reason for the failure to accept it.

REMAND: The claimant has been unable to work effective September 13, 2017 due to a motorcycle accident. The issue of whether the claimant meets the availability requirements of being able to and available for work, effective September 13, 2017, is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 21, 2017, (reference 06) decision is affirmed. The claimant failed to accept a suitable offer of work. Benefits are withheld 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 issue of whether the claimant is able and available effective September 13, 2017 (due to his medical condition) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn