

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY A SODERBLOM
Claimant

APPEAL NO. 10A-UI-07648-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MODULEX US MANUFACTURING LLC
Employer

OC: 01/31/10
Claimant: Respondent (2-R)

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

The employer, Modulex, filed an appeal from a decision dated May 7, 2010, reference 02. The decision allowed benefits to the claimant, Larry Soderblom. After due notice was issued a hearing was held by telephone conference call on July 14, 2010. The claimant did not provide a telephone number where he could be contacted and did not participate. The employer participated by General Manager Michael McKeag.

ISSUE:

The issue is whether the claimant refused an offer of work.

FINDINGS OF FACT:

Larry Soderblom was employed by Modulex from December 2, 2008 until January 26, 2010 as a full-time fabricator. He was laid off due to lack of work and filed an unemployment claim with an effective date of January 31, 2010. He has filed weekly claims through July 10, 2010, and has not reported any wages during that entire time.

On March 26, 2010, Supervisor Rod Creps called the claimant to inform him he was being recalled effective April 2, 2010. Mr. Soderblom said he was not sure he wanted to return to work because he was already working for a home building company. General Manager Michael McKeag called Mr. Soderblom the week of April 4, 2010, and at that time the claimant did not say anything about having another job, he only said he was not sure he wanted to return to work because of the rate of pay. He was being recalled to the same job with the same hours and wages he had before the lay off.

Mr. McKeag offered Mr. Soderblom a raise of 50 cents an hour for two months and then another 50 cent an hour raise. The claimant declined.

Larry Soderblom has received unemployment benefits since filing a claim with an effective date of January 31, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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. 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.

The claimant was offered a return to work effective April 2, 2010, but declined. The initial refusal was based on his assertion he was working elsewhere but the records of Iowa Workforce Development indicate he was not working because no wages have been reported during the entire period of his claim to the date of the hearing.

His refusal appears to be based on the rate of pay he was offered, but this is the same rate of pay he received during the period of his employment prior to lay off. The record establishes the claimant did not have good cause for refusing the offer of work and he is disqualified.

Iowa Code section 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.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 7, 2010, reference 02, is reversed. Larry Soderblom refused an offer of suitable work without good cause. He is disqualified effective March 26, 2010. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs

