

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUSTIN ALLEN
Claimant

APPEAL NO. 09A-UI-04716-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**Original Claim: 01/18/09
Claimant: Respondent (5)**

Iowa Code section 96.5(1) – Layoff
Iowa Code section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

Sedona Staffing filed a timely appeal from the March 20, 2009, reference 07, decision that allowed benefits effective January 18, 2009. After due notice was issued, a hearing was held on April 21, 2009. Claimant Austin Allen did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer and presented testimony through Rhonda Stout, Branch Manager.

ISSUE:

Whether the claimant separated from the employer for a reason that disqualifies him for unemployment insurance benefits.

Whether the claimant refused an offer of suitable work without good cause.

Whether the claimant has met the work ability and work availability requirements of Iowa Code section 96.4(3) since he established his claim for benefits.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Austin Allen established his employment relationship with Sedona Staffing on January 5, 2009 and was placed in a full-time assignment on that day. On January 13, 2009, Mr. Allen was temporarily laid off from the assignment. On February 3, 2009, a Sedona Staffing representative contacted Mr. Allen for the purpose of recalling him to the assignment. At that time, Mr. Austin indicated he was not going to return to the assignment because he had accepted and started other employment.

Mr. Allen established a claim for benefits that was effective January 18, 2009. Mr. Allen claimed benefits only for the week of January 18-24, 2009 and received benefits of \$148.00 for that week.

REASONING AND CONCLUSIONS OF LAW:

The January 13, 2009, layoff would not disqualify Mr. Allen for unemployment insurance benefits. See Iowa Code section 96.5(1) and 96.5(2)(a); see also 871 IAC 24.1(113).

Where a person refuses an offer of suitable work without good cause, the person is disqualified for unemployment insurance benefits until he earns ten times his weekly benefit amount, provided he is otherwise eligible. See Iowa Code section 96.5(3)(a).

871 IAC 24.24.2(b) provides as follows:

If the claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer to work until such time as 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.

871 IAC 24.24(4) provides as follows:

Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to

refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Where a person is working to such an extent that he is not available for other employment, the person is deemed not "available" for purposes of Iowa Code section 96.4(3). See 871 IAC 24.23(23).

Mr. Allen was eligible for benefits up to the time that he refused recall to the assignment, February 3, 2009. At that point, Mr. Allen refused suitable employment. However, the evidence indicates that Mr. Allen refused recall to the assignment because he had accepted other employment. In other words, Mr. Allen was not available to return to Sedona Staffing because he was working for a new employer. Mr. Allen's new employment constituted good cause for refusing the recall to the prior employment. Because Mr. Allen did not meet the work availability requirements of Iowa Code section 96.4(3) at the time he refused the offer of suitable employment, the refused recall would not disqualify him for benefits, but his failure to meet the "availability" requirement of Iowa Code section 96.4(3) would. Mr. Allen was ineligible for benefits effective February 1, 2009, the Sunday of the week in which he refused recall to the assignment.

The employer was not a base period employer for purposes of the claim that was effective January 18, 2009 and was not charged for the \$148.00 in benefits the claimant received for the week ending January 24, 2008.

DECISION:

The Agency representative's March 20, 2009, reference 07, decision is modified as follows. The claimant was temporarily laid off effective January 13, 2009. The layoff did not disqualify the claimant for benefits and he was eligible, provided he met all other eligibility requirements. The claimant refused recall to the employment on February 3, 2009 because he had accepted and was performing work in new employment. There was good cause for the refusal and the refusal did not disqualify the claimant for benefits. Effective February 1, 2009, the claimant was no longer eligible for benefits, because he was working to such an extent that he was not available for other work and no longer met the availability requirements of Iowa Code section 96.4(3).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw