

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN RIVAS
Claimant

APPEAL NO: 10A-UI-17792-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES
Employer

OC: 05-09-10
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 17, 2010, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 9, 2011. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUES:

The issues are whether the claimant is able and available for work, whether the claimant sought reassignment from the employer and whether she has refused a suitable offer of work.

FINDINGS OF FACT:

The claimant went in to interview with the employer July 23, 2010, but the employer was not available for the interview and the claimant was asked if she could start an assignment the following Monday, July 26, 2010. The claimant stated she could and was given some paperwork regarding insurance benefits but no additional documentation regarding seeking reassignment from the employer was presented to her and she did not go through orientation. She worked her assignment at Rain and Hail Insurance from July 26 through July 29, 2010, when the employer notified her that the assignment was over. The employer told her it would call her if it had another assignment for her. The claimant was not aware of any requirement that she call the employer weekly to notify it of her availability. On August 31, 2010, the employer called and left her a voice mail stating she should call it back as soon as possible. The voice mail did not offer the claimant a position and the claimant did not arrive home and receive the message until after the employer's office closed. Consequently, she thought it was too late and did not call the employer back that day or the next. The claimant has not spoken to the employer since her last assignment. She is able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work and did not refuse a suitable offer of work.

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".

Iowa Code section 96.5-1-j provides:

An individual shall be disqualified for benefits:

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, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The claimant is able and available to accept work, whether temporary or full-time. She did not refuse a suitable offer of work. To be a bona fide suitable offer the employer must either speak to the claimant personally or send a registered letter stating the terms of the job offer. In this case the employer left her a voice message, approximately one month after her last assignment, asking her to return its call ASAP. The claimant did not get home before the employer's office closed. Consequently, there was no suitable offer of work. The claimant has not sought further assignments with this employer because the employer told her it would call her if it had additional assignments for her and it never provided her with a form detailing that she had to maintain contact by calling it at certain intervals so it would know she was available for work. Under these circumstances the administrative law judge concludes the claimant is able and available for work, did not refuse a suitable offer of work and was not provided with the employer's form stating she was required to seek additional work from it. Therefore, benefits are allowed effective the week ending August 7, 2010.

DECISION:

The December 17, 2010, reference 03, decision is reversed. The claimant is able and available for work, did not refuse a suitable offer of work and was not told she needed to seek additional assignments from the employer. Benefits are allowed effective August 7, 2010, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Dated and Mailed

je/css