

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TIMOTHY A WALKER
153 N WILLARD
OTTUMWA IA 52501

MIDWEST CONSTRUCTION SERVICES INC
2323 GULL RD STE D
KALAMAZOO MI 49048

Appeal Number: 04A-UI-12026-DT
OC: 10/03/04 R: 03
Claimant: Appellant (3)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Timothy A. Walker (claimant) appealed a representative's November 5, 2004 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with employment with Midwest Construction Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-12027-DT. The claimant participated in the hearing and presented testimony from one other witness, Jeff Kokemiller. Michael McPherson appeared on the employer's behalf and presented testimony from one other witness, Sane Bertleson. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant refuse an offer of suitable work?

FINDINGS OF FACT:

The claimant established an unemployment insurance benefit year effective October 3, 2004. His base period began July 1, 2003 and ended June 30, 2004. His average weekly wage for purposes of his unemployment insurance claim was determined to be \$471.67 per week, or \$11.79 per hour. His wage at his original base period employer had been \$19.00 per hour. He had two subsequent base period employers before this employer; his wage at those two employers was between \$10.00 and \$15.00 per hour, depending on the worksite, and \$10.80 per hour, respectively. His work was primarily general construction and mechanical labor, as well as pipefitting.

The employer is a temporary construction employment firm. The claimant began taking assignments with the employer on September 14, 2004. His initial assignment paid \$18.00 per hour plus a \$40.00 expense per diem for pipe-fitter work in Waterloo, Iowa, nearly a three-hour drive from the claimant's home. He completed that assignment on October 1, 2004.

On October 12, the employer called the claimant and offered him a full-time position to start immediately in Mount Pleasant, Iowa, about 45 miles away from the claimant's home, at the rate of \$18.00 per hour, but no expense per diem because the assignment was less than 60 miles away. The position was with a business that did both plumbing and mechanical contracting work. When Mr. Bertleson, the employer's staffing consultant, offered the claimant the position, the claimant immediately declined, indicating that he had already heard about the assignment from his friend Mr. Kokemiller, who also had been taking assignments through the employer. The claimant was concerned that the work involved would be strictly plumbing work, for which he was not qualified, rather than pipefitting work, and he did not give Mr. Bertleson an opportunity to explain that there was non-plumbing work in the assignment before he refused the position.

On October 20, 2004, the employer contacted the claimant and offered him an assignment doing pipefitting and welding in Muscatine, Iowa at the rate of \$16.00 per hour plus a \$24.00 per day expense per diem. The claimant declined because he knew that Mr. Kokemiller had already declined the assignment because he was working elsewhere, so that he would not be able to carpool to Muscatine with Mr. Kokemiller. The claimant did not wish to drive by himself for two-and-a-half to three hours, and he was concerned about getting home nightly at a reasonable time to address his parental responsibilities. However, he did not ask the employer if there was anyone else with whom he could carpool. He was also concerned about how long-term or short-term the assignment might be, not wanting a short-term assignment, and he was not satisfied with the employer's indefinite response. He also wanted more money for the assignment. He therefore declined the offer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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 positions offered to the claimant on October 12 and October 20, 2004 were reasonably suitable and comparable and within the purview of the usual occupation of the claimant. 871 IAC 24.24(14)(a). They were within the claimant's physical capabilities and did not require any undue physical skill or particular training which the claimant does not already possess. 871 IAC 24.24(2)(a). The distance from the jobs offered was consistent with what the claimant had previously indicated he was willing and able to travel for employment with the employer. 871 IAC 24.24(10). The hourly wage offered substantially exceeded 100 percent of the claimant's average wage and satisfied the percentage criteria established for suitable work. 871 IAC 24.24(15)(i). The claimant refused suitable offers of work both on October 12 and on October 20, 2004. Benefits are denied until the claimant has requalified by earning ten times his weekly benefit amount in insured wages, if he is then otherwise eligible.

DECISION:

The representative's November 5, 2004 decision (reference 03) is modified in favor of the employer. The claimant refused a suitable offer of work on both October 12 and October 20, 2004. As of October 12, 2004, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/b