

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS L BIRKENHOLZ
Claimant

APPEAL NO. 11A-UI-03753-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 02/21/10

Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Douglas L. Birkenholz (claimant) appealed a representative's March 21, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in connection with an offer of work with Kelly Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2011. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant had one assignment which began on August 28, 2010, working full-time for the employer's Johnston, Iowa, business client. At that time, the claimant lived in Johnston. His last day on the assignment was February 4, 2011.

The work on the assignment for that business client was nearing its completion as of February 4. The claimant was off work from February 5 through February 15. On February 15, he called the business client to find out if he was needed to return to work, and on February 16 he called both the business client and the employer. When he spoke to the employer's representative, he was told it was possible that the business client might still need him back. At the same time, the representative told the claimant that there was a possible position starting the next day in Waukee, about 20 miles away from the claimant's home in Johnston. The claimant responded he would prefer to wait and find out if the original business client still needed him back or not.

On February 17 the employer's representative contacted the claimant and indicated that the original business client did not have any further work for the claimant. Nothing further was said as far as whether the potential job in Waukee was still available for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work without good cause.

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.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

871 IAC 24.24(15) provides in pertinent part:

In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

Length of unemployment.

Distance from the available work.

The "offer" of work that was made to the claimant on February 16, 2011 was tentative, not definite. His "refusal" was also not definite, but conditional. The employer never followed up with a definite offer. Further, given that the claimant had only been briefly and potentially only temporarily unemployed from a business in his home town, the claimant's declining of a tentative offer of work 20 miles away was not a refusal of a suitable offer of work without good cause.

DECISION:

The representative's March 21, 2011 decision (reference 01) is reversed. The claimant did not refuse a suitable offer of work without good cause. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw