

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON LOX**  
Claimant

**APPEAL NO. 09A-UI-03469-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**Original Claim: 02-17-08  
Claimant: Respondent (2-R)**

Section 96.5(3)a – Work Refusal

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 24, 2009, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 30, 2009. The claimant participated in the hearing. Jan Windsor, Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant worked as a production worker for the employer, last assigned to PPG, from July 21, 2008 to January 16, 2009, when he was laid off due to a lack of work. The employer tried to call the claimant between January 23 and January 26, 2009, but he testified he did not receive their messages and consequently did not return their calls. On January 26, 2009, the employer sent the claimant a certified letter that included two job offers and told him to contact it by noon January 29, 2009, or it would consider his failure to respond as a work refusal (Employer's Exhibit One). The claimant lives with his father and his father signed for the letter January 27, 2009 (Employer's Exhibit One). The claimant learned of the letter January 29, 2009, and called the employer. The job offers were first shift at Antennacraft earning \$8.00 per hour; a position on any shift at Lance Private Brands earning \$8.50 to \$9.90 per hour; or a position at Iowa International, offered over the phone, as a general laborer/forklift operator earning \$10.00 per hour. The employer needed an answer immediately so it could drug test and take care of other procedural issues the following day, Friday, January 30, 2009, so the claimant could start Monday, February 2, 2009. The claimant did not want to accept any of those positions because he took a clerical test January 28, 2009, and had an interview the following week. He asked for more time to see what happened with his interview, but the employer said it needed to know right away and if he did not accept at that time it would be considered a work refusal. The claimant's average weekly wage is \$284.71. The offer was made in the second week of unemployment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did refuse 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 employer made two offers of work to the claimant in the certified letter and an additional offer to the claimant over the phone Thursday, January 29, 2009, when the claimant called in response to the letter. The claimant was waiting for a job interview the following week and did not want to accept employment with the employer until he found out the result of his interview. He asked the employer if he could wait until he found out about the other job possibility, but the employer needed someone right away and denied his request. The offers at Antennacraft, Iowa

International and Lance Private Brands were suitable, as they were made in the second week of the claimant's unemployment and the wages met the minimum wage requirements described above for an offer to be considered suitable. Under these circumstances, the administrative law judge must conclude that the claimant refused three suitable offers of work and benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The February 24, 2009, reference 03, decision is reversed. The claimant did refuse three suitable offers of work. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/kjw