

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT E MIKEL
Claimant

APPEAL NO. 07A-UI-03114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**OC: 01/07/07 R: 04
Claimant: Respondent (4)**

Section 96.5(3)(a) – Refusal of Suitable Workforce Development
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Manpower Temporary Services filed a timely appeal from the March 13, 2007, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on April 11, 2007. Claimant Robert Mikel participated. Staffing Specialist Julie White represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which records indicate that no benefits have been disbursed to the claimant connection with the claim.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

Whether the claimant refused a suitable offer of employment.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Mikel completed his one and only assignment through Manpower Temporary Services on January 8, 2007. That assignment had been full-time, first-shift and had paid \$6.50 hour. On January 11, 2007, Staffing Specialist Jennifer Lincoln Lewis contacted Mr. Mikel to offer an assignment in Wilton, 13 miles north of Muscatine. Ms. Lincoln Lewis told Mr. Mikel that the position would be a full-time, second-shift position that would pay \$7.00 per hour. At this point, Mr. Mikel reminded Ms. Lincoln Lewis that he needed an assignment in Muscatine because he lacked transportation to an out-of-town assignment. When Mr. Mikel had initially applied for work at Manpower, he had specified that he wanted a first or second shift assignment and needed assignments in Muscatine due to his limited transportation. During the conversation on January 11, Ms. Lincoln Lewis acknowledged that Mr. Mikel had previously requested

assignments in Muscatine. Ms. Lincoln Lewis and Mr. Mikel did not further discuss the assignment in Wilton.

At the time Mr. Mikel received the call from Ms. Lincoln Lewis, he had already commenced a new full-time assignment through Temp Associates temporary employment agency. Nonetheless, Mr. Mikel continued to be interested in further assignments with Manpower, provided the assignment was in Muscatine and would pay more than Mr. Mikel was making in his assignment with the other temporary employment agency.

REASONING AND CONCLUSIONS OF LAW:

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 evidence in the record establishes that Mr. Mikel had good cause to refuse the new assignment in Wilton. First and foremost, Mr. Mikel had already commenced new full-time employment. This alone was good cause for refusing the offer of employment. See 871 IAC 24.24(7). Second, the assignment was 13 miles outside of Muscatine, Mr. Mikel lacked transportation to the assignment, and Mr. Mikel had previously indicated he could only accept assignments in Muscatine. This, too, was good cause for failing to accept the offer of employment. See 871 IAC 24.24(7). Because Mr. Mike had good cause to refuse the assignment in Wilton, his refusal of that assignment on January 11, 2007, would not disqualify him for unemployment insurance benefits. However, the administrative law judge must further consider Mr. Mikel's availability for work under Iowa Code section 96.4(3). See 871 IAC 24.24(4).

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.

871 IAC 24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The evidence indicates that between January 8, Mr. Mikel's last day at his Manpower assignment, and January 11, the day on which Ms. Lincoln Lewis contacted Mr. Mikel to offer a new assignment, Mr. Mikel had already commenced new full-time employment. This new full-time employment effectively removed Mr. Mikel from the labor market. Accordingly, Mr. Mikel was not eligible for benefits effective the benefit week that ended January 13, 2007 and would continue to be ineligible for benefits so long as he continued in the new assignment.

DECISION:

The claims representative's March 13, 2007, reference 04, decision is modified as follows: The claimant had good cause to refuse the offer of employment on January 11, 2007, and the refusal does not disqualify the claimant for benefits. The claimant's new full-time employment, commenced on or before January 11, 2007, removed him from the labor market and made him ineligible for benefits so long as he continued in the new assignment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw