

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE A GARZA

Claimant

APPEAL NO. 15A-UI-05623-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUPREME STAFFING INC

Employer

OC: 04/05/15

Claimant: Respondent (2)

Iowa Code Section 96.5(3) – Refusal of Suitable Work

Iowa Code Section 96.4(3) – Able & Available

Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 7, 2015, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible, based on an Agency conclusion that the work Supreme Staffing, Inc. offered on April 15, 2015 was unsuitable due to the wage offered. After due notice was issued, a hearing was held on June 22, 2015. Mike Riehl represented the employer. Claimant Jose Garza did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's base period wages and of the benefits disbursed to the claimant (DBRO).

ISSUES:

Whether the claimant refused an offer of suitable work on April 15, 2015 without good cause.

Whether the claimant was able to work and available for work during the two-week period of April 12-25, 2015.

Whether the claimant was overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Supreme Staffing, Inc. is a temporary employment agency. Jose Garza was employed by Supreme Staffing from April 2014 and performed work in a single, long-term temporary work assignment at Lineage Logistics in Ottumwa. The work involved packing or boxing meat. The assignment paid \$9.75 per hour. The number of hours the assignment provided varied from week to week, from 20 to 50. If Mr. Garza worked more than 40 hours per week, he would receive overtime pay for the additional work. The assignment was first shift. Mr. Garza completed the assignment on April 4, 2015. Mr. Garza went to the Supreme Staffing office on Monday, April 6,

2015 and notified the employer that his assignment had ended. The employer did not immediately have another assignment available for Mr. Garza.

In response to his separation from the temporary work assignment, Mr. Garza established a claim for unemployment insurance benefits that was effective April 5, 2015. Workforce Development calculated Mr. Garza's weekly benefit amount to be \$242.00. Mr. Garza claimed benefits for the three-week period of April 5, 2015 through April 25, 2015. The total amount of benefits disbursed to Mr. Garza for three-week period was \$726.00.

On Wednesday, April 15, 2015, Mr. Garza went to the Supreme Staffing office. At that time, Mike Riehl, Office Manager, spoke to Mr. Garza about two available assignments. The client businesses wanted the assignments to start the next day, April 16, 2015. Mr. Riehl had the authority to place Mr. Garza in either assignment without need for further interview or screening. Mr. Riehl provided Mr. Garza with the important particulars regarding each available assignment. One available assignment was at Ajinomoto in Eddyville, 15 miles from Ottumwa. Mr. Garza had previously indicated a willingness to travel that distance for an assignment and had transportation to do so. The assignment would pay \$10.00 per hour, would involve first shift hours, and would offer around 40 hours per week. The second assignment was at Dr. Pepper in Ottumwa. The assignment would pay \$10.50 per hour, would involve first shift hours, and would offer 30 to 40 hours per week. Both assignments paid the prevailing wage for the type of work involved. The availability of the assignments had nothing to do with a labor dispute. If Mr. Garza accepted either assignment, he would not have to agree to join, or agree not to join, a labor union. Mr. Garza refused both proposed work assignments. Mr. Garza told Mr. Riehl that he did not want to accept either assignment because he was waiting to hear from another a different prospective employer about whether he would be hired for a job that would paid \$20.00 per hour and did not desire to have to quit a new assignment with Supreme Staffing to go to the other employment. Mr. Garza later contacted Mr. Riehl on April 24, 2015 to advise that he had been hired by other prospective employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(4)a-b provides:

An individual shall be disqualified for benefits:

4. Labor disputes. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

a. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

b. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of

the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

Iowa Admin. Code r. 871-24.24(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.

Iowa Admin. Code r. 871-24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The evidence in the record establishes that the work the employer had available to Mr. Garza in each assignment was suitable work. Both proposed assignments paid more per hour than the previous assignment. Both assignments offered full-time or near full-time employment. The particulars of each proposed assignment were similar to the prior assignment. Both proposed assignment paid the prevailing wage for the particular work involved. The availability of the assignments was not based on a labor dispute and the acceptance of either assignment would not require acceptance or rejection of membership in a union.

On April 15, 2015, the employer made a bona fide offer of work regarding each assignment through in-person communication with Mr. Garza. The employer discussed the particulars of the proposed assignments with Mr. Garza. The employer had the authority to immediately

place Mr. Garza in the assignments. Mr. Garza provided a definite refusal of the proposed assignments that were to start the next day. At the time Mr. Garza refused the assignments, he had not accepted any other employment. Instead, he was merely waiting to hear from the other prospective employer regarding whether he would be offered the other, better paying employment. The circumstances do not establish good cause for rejecting the proposed temporary work assignments. Mr. Garza's decision to remain unemployed while he waited to see if different employment would be offered was unreasonable.

Based on the refusal of suitable work with Supreme Staffing, Mr. Garza is disqualified for benefits effective the benefit week that ended April 18, 2015. Mr. Garza is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Garza must meet all other eligibility requirements. Supreme Staffing is relieved of liability for benefits paid to the claimant for the period beginning April 12, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(20) provides:

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

(20) Where availability for work is unduly limited because the claimant is waiting to go to work for a specific employer and will not consider suitable work with other employers.

The evidence establishes that Mr. Garza was not available for work within the meaning of the law during the two-week period of April 12-25, 2015 because he was waiting to go to work for the specific employer and would not consider the suitable work that Supreme Staffing had for him during that two-week period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for the benefits, the claimant must repay the benefits and Workforce Development must recover the benefits, even if the claimant was not at fault in receiving the benefits. Because this decision disqualifies Mr. Garza for benefits effective the week that ended April 18, 2015, the \$484.00 in benefits that Mr. Garza received for the two-week period of April 12-25, 2015 constitutes an overpayment of benefits. Mr. Garza must repay that amount.

DECISION:

The May 7, 2015, reference 02, decision is reversed. The claimant refused suitable work with the former employer on April 15, 2015 without good cause. Effective the benefit week that ended April 18, 2015, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will be relieved of liability for benefits for the period beginning April 12, 2015. The claimant was not available work within the meaning of the law during the two-week period of April 12-25, 2015. The claimant is overpaid \$484.00 in benefits for the two-week period of April 12-25, 2015. The claimant must repay that amount.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css