

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL R LARSON
Claimant

APPEAL NO. 09A-UI-01326-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING & PROFESSIONAL
SERVICES LLC**
Employer

OC: 06/08/08 R: 01
Claimant: Appellant (5)

Iowa Code Section 96.5(3)(A) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Randal Larson filed a timely appeal from the January 22, 2009, reference 01, decision that denied benefits and that concluded he had refused an offer of suitable work on December 29, 2008. After due notice was issued, a hearing was held on February 16, 2009. Mr. Larson participated. Robert Hardy, Human Resources Assistant, represented the employer.

ISSUES:

Whether the claimant refused to accept a suitable offer of employment on or about December 29, 2008.

Whether the claimant has been able to work and available for work since he established the additional claim for benefits that was effective December 21, 2008.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Randal Larson established his employment relationship with Adventure Staffing & Professional Services on June 30, 2008. On June 30, 2008, Mr. Larson started a full-time assignment at Rosenboom Machine and Tool. The pay was \$12.25 per hour. The hours of the employment were 5:00 p.m. to 4:30 a.m.

Rosenboom Machine and Tool temporarily shut down over the Christmas and New Year's holidays. The last day of production prior to the shutdown was December 24, 2008. The first day of production after the shutdown was January 5, 2009. At the time Rosenboom notified Mr. Larson of the shutdown, Rosenboom instructed Mr. Larson to notify Adventure Staffing of the shutdown and that his services would not be needed between December 25 and January 4. Mr. Larson made timely contact with an Adventure Staffing representative and notified Adventure Staffing of the shutdown. Rosenboom, Adventure Staffing, and Mr. Larson all expected Mr. Larson to return to Rosenboom on January 5, 2009, when production recommenced.

During Mr. Larson's call to Aventure Staffing, the Aventure Staffing representative told Mr. Larson about a short-term assignment at Dr. Pepper/Snapple. The assignment would start December 29, 2008. The assignment would end before Mr. Larson was recalled to the assignment at Rosenboom. The assignment would be part-time. The assignment would pay \$10.00 per hour. Aventure Staffing offered the assignment to Mr. Larson. Mr. Larson refused the offered assignment. Mr. Larson told the Aventure Staffing representative that he and his wife were leaving on vacation and would be out-of-town from December 30 through January 3.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Workforce Development rule 871 IAC 24.24(4) provides as follows:

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.

Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not

be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

The weight of the evidence indicates that Aventure Staffing, not Rosenboom Machine and Tool, is Mr. Larson's employer. The weight of the evidence indicates that Mr. Larson was in a temporary employment assignment with client business Rosenboom Machine and Tool. The weight of the evidence indicates that Mr. Larson's assignment ended on December 24, 2008, but that all parties concerned expected Mr. Larson would start a new assignment at Rosenboom on January 5, 2009. The weight of the evidence indicates that Aventure Staffing offered

Mr. Larson a short-term assignment that would have provided fewer hours and a lower wage than Mr. Larson received from the assignment at Rosenboom Machine and Tool. The evidence fails to establish that the employment was suitable. Mr. Larson's refusal of the offered work did not disqualify him for unemployment insurance benefits.

In any event, the weight of the evidence indicates that Mr. Rosenboom was not available for work during the week that ended January 3, 2009. The evidence indicates that the claimant was out-of-town on vacation for most of the week. A person who is out-of-town the majority of the week on personal business is not deemed available for work and is not eligible for unemployment insurance benefits. Mr. Larson was not eligible for benefits for the week that ended January 3, 2009. The evidence indicates that Mr. Rosenboom was available for work and eligible for benefits the week that ended December 27, 2008. The evidence indicates that Mr. Larson was returned to work on January 5, 2009 and was not eligible for benefits thereafter because he had returned to the full-time employment.

DECISION:

The Agency representative's decision dated January 22, 2009, reference 01, is modified as follows. The claimant refused an offer of unsuitable employment. The refusal did not disqualify the claimant for benefits. The claimant was not available for work during the week that ended January 3, 2009 and was not eligible for benefits for that week. The claimant was available for work and eligible for benefits for the week that ended December 27, 2008. The claimant was not eligible for benefits for the week ending January 10, 2009 or thereafter because he had returned to his full-time employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs