

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W WARD

Claimant

APPEAL NO: 10A-UI-09746-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC

Employer

OC: 05 /16/10

Claimant: Respondent (1)

Section 95.5-3-a – Job Refusal

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 29, 2010 reference 03 that held the claimant did not refuse an offer of suitable work on May 21, 2010, and benefits are allowed. A telephone hearing was held on August 25, 2010. The claimant did not participate. Kelly Harris, Branch Manager, participated for the employer.

ISSUEES:

Whether the claimant refused a recall to suitable work.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began work on assignment for his temporary employment firm at General Mills beginning May 4, 2009. This is considered a long-term, temporary assignment. The claimant is a full-time assembler.

The claimant experienced a temporary layoff due to a plant shutdown in late May 2010 to June 7. A review of the claimant's payroll/work records with the employer representative shows he correctly reported his earnings when claiming benefits for the weeks ending May 22, and May 29. The employer offered claimant a temporary assembly worker position on May 21 at CCB Packaging that he declined. The claimant could have earned \$7.25 an hour for working less than 40 hours a week, and \$8.00 an hour for working 40 or more hours a week. The claimant's average weekly wage for wages earned in his base period is \$466.60.

The claimant failed to respond to the hearing notice. The claimant is still employed on assignment for the employer at General Mills. He did experience another temporary layoff from his assignment in July 2010, and he correctly reported no earnings for the weeks ending July 3, and July 10. The claimant declined an employer temporary job offer on July 9 to work at Amana, and he returned to work at General Mills the following week.

REASONING AND CONCLUSIONS OF LAW:

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".

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 administrative law judge concludes that the claimant is able and available for work.

The administrative law judge concludes claimant did not refuse an offer of suitable work with the employer on May 21, 2010 and/or July 9, 2010.

The claimant was on a temporary layoff from his long-term assignment at General Mills when he filed his unemployment claim, and he returned to that assignment when the plant shutdown ended in June and July. There is no availability disqualification in this matter.

The May 21 job offer is not considered as suitable work, because it is substantially less than claimant's average weekly wage of \$466.60 offered during the first week of his unemployment. The claimant had a good cause to reject the July 9 work offer as he elected to return to his long-term job assignment at General Mills the following week, and he had sufficient earnings for that period that disqualified him from receiving any benefit.

DECISION:

The department decision dated June 29, 2010, reference 03, is affirmed. The claimant is not disqualified for refusing employer job offers on May 21, and July 9, 2010. The claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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