

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BYRON K FISHER
Claimant

APPEAL NO. 09A-UI-01168-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

**OC: 10/05/08 R: 03
Claimant: Respondent (1)**

Section 96.5-3-a - Failure to Accept Suitable Work
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 23, 2009, reference 02, that concluded claimant was not subject to disqualification for failing to accept work on November 21, 2008. A telephone hearing was held on February 9, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Lindsey McGowan. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant's high quarter wages totaled \$4,904.00. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 5, 2008.

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer at an assignment at Bochner Chocolates from October 20 to November 1, 2008. He filed an additional claim for benefits effective November 2, 2008.

On November 21, 2008, the employer offered the claimant a job at Vangent's call center in Iowa City, Iowa. The job was for a customer service representative position with a starting rate of pay of \$9.29 per hour for 40 hours of work per week (\$371.60 per week). The job was one that could have lead to permanent employment. The claimant accepted the position and reported to the employer's office to take the typing test for the job. He needed to be able to type 20 words

per minute and was offered unlimited practice tries before taking the test. When he reported to the office, he refused to take the typing test and failed to accept the job.

The claimant's average weekly wage based on the highest quarter of wage in his base period was \$377.27.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The claimant declined to accept the job at Vangent. I cannot find that he had good cause to do so based on his not wanting to take a typing test. The weekly wage offered the claimant, however, was \$371.60, which is less than 100 percent of the average weekly wages based on the high quarter wages. The case law makes it clear that it does not matter what the reason for the refusal is, a claimant is not subject to disqualification if the work offered does not meet the wage requirements of the law. Biltmore Enterprises, Inc., v Iowa Department of Job Service, 334 N.W.2d 284 (Iowa 1983).

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The fact that the claimant declined unsuitable work does not make him unavailable for work.

DECISION:

The unemployment insurance decision dated January 23, 2009, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css