

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLEN D SAUER**  
Claimant

**APPEAL NO: 11A-UI-14747-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEDONA STAFFING**  
Employer

**OC: 10/02/11  
Claimant: Respondent (5)**

Iowa Code § 96.5(3)a – Refusal of Employer’s Work Offer

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative’s November 8, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer’s account subject to charge because the claimant’s employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Chad Baker and Rhonda Stout appeared on the employer’s behalf.

During the hearing an issue of whether the claimant refused an offer of suitable work appeared to be the determining issue in this case. The parties agreed the issue of whether the claimant refused to accept the employer’s offer of work should also be included in this decision. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits

**ISSUES:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer, or did the employer discharge him for reasons constituting work-connected misconduct?

Did the claimant refuse the employer’s offer of work?

**FINDINGS OF FACT:**

The claimant registered to work for the employer’s clients. The employer assigned him to a material handler job in July. The claimant accepted that job and worked at this assignment until late July.

The claimant established a claim for benefits during the week of October 2, 2011. In the claimant’s base period, his highest average weekly wage is \$618.52.

The employer assigned the claimant to a job on October 17. This job was for a general laborer job that paid \$8.50 an hour for full-time work. This was a temp-to-hire job. The claimant understood he was to report to the job site at 5 a.m. and did. The client’s contact person did not report to work until 7 a.m. The claimant came back at 7 a.m.

At 7 a.m., the claimant learned the job the client had was not for a forklift driver or a material handler. This was the job the claimant wanted and told the client he was there for that position. The client's representative understood the claimant only wanted a forklift driver position and walked away. The claimant called the employer and left a message asking what he needed to do because no one told him where to work.

Later that morning, Stout talked to the claimant and explained to him that the job was not a forklift operator position. Stout asked the claimant if he was still interested in working at this temp-to-hire job if the client allowed him to return. The claimant told her yes. Stout then indicated she would contact him after she had talked to the client.

The client agreed the claimant could come back and try their job. Stout called the claimant back to give him this message, but could only leave a voice message for him. The claimant and Stout did not talk again that day or the next day. The claimant did not go back to the job assignment. He did not work for the client on October 17.

#### **REASONING AND CONCLUSIONS OF LAW:**

Since the claimant did not perform any work at the job assignment on October 17, there is no employment separation to address. Instead, the issues are whether the claimant refused the employer's offer of work and if that offer of work was suitable. A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. Iowa Code § 96.5(3)a. For a job to be suitable, one factor to consider is the wage paid for the job. The job paid \$8.50 an hour. The claimant wanted a higher paying job, but accepted the assignment because it was full time and was a temp-to-hire position. There was a communication issue about what the job position was because the claimant wanted a forklift operator or material handler position and the client's job was for neither of these jobs.

Even though the claimant went to the job assignment, the law requires the job to pay a certain wage based on the claimant's wages in the highest quarter of his base period and the length of time he has been unemployed. Iowa Code § 96.5(3)a. In this case the law required the job to pay the claimant a minimum of \$432 a week and it only paid \$420 a week. Based on this single factor, the job the employer assigned the claimant was not suitable for him. As a result, the claimant's failure to work at this job does not disqualify him from receiving benefits. As of October 16, 2011, the claimant remains qualified to receive benefits.

The employer is not one of the claimant's base period employers and will not be charged during his current benefit year.

(If the job had been suitable for the claimant, he would not be qualified to receive benefits. Also, the claimant's testimony would not have been deemed as credible as the employer's. Since this case was decided on another factor, the reasons for the credibility conclusions are not relevant to the outcome of this case and do not need to be addressed in the decision.)

**DECISION:**

The representative's November 8, 2011 determination (reference 02) is modified, but the modification has no legal consequence. Since the claimant did not work and perform any services on October 17, no employment separation occurred. Instead, the claimant refused the employer's October 17 job assignment by failing to perform any work or going back to the job site after the job duties he would be doing were explained to the claimant. Since the wages the job offered do not meet the guidelines stated in Iowa Code § 96.5(3)a, the claimant remains qualified to receive benefits as of October 16, 2011. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs