

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAUREN E MOSER
Claimant

APPEAL NO. 11A-UI-00057-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 11/21/10
Claimant: Appellant (4R)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated December 20, 2010, reference 02, which denied unemployment insurance benefits upon a finding that the claimant refused to accept suitable work on May 10, 2010. After due notice, a telephone hearing was held on February 9, 2011. The claimant participated personally. Participating as a witness for the claimant was Mr. Matt Moser, the claimant's spouse. The employer participated by Debra Perdue, Branch Manager.

ISSUE:

At issue in this matter is whether the claimant is able and available for work and whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lauren Moser had accepted temporary assignments with Temp Associates prior to May 10, 2010. The claimant had accepted a one-day assignment at Metro Group on March 24, 2010 to work as a hand/machine operator at the rate of \$10.00 per hour.

On May 10, 2009, Ms. Moser responded to a previous message left by the company. Temp Associates offered the claimant a three-week work assignment at Metro Group performing the same work at the same rate of pay. Although the assignment was for three weeks, Ms. Moser was only willing to accept one-day's work and therefore did not accept the three-week assignment.

The claimant did not accept the three-week assignment because she was in the process of relocating to the state of Missouri. It is the claimant's position that she was willing to accept one-day's work and may have been willing to work longer if the temporary employer were able to "guarantee" that the assignment would unequivocally continue for three weeks.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant established good cause for her refusal of work on May 10, 2010. She has. The second question is whether the evidence establishes that the claimant was not able and available for work during this period. It does.

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 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The evidence in this case establishes that Ms. Moser did not accept the three-week assignment because she was in the process of moving to a different geographic area. Under the provisions of 871 IAC 24.24(7) this is a good-cause reason for not accepting an offer of work.

The question in this case then becomes whether Ms. Moser was able and available for work within the meaning of the Iowa Employment Security Act. The evidence in the record establishes that Ms. Moser was unable to accept a three-week work assignment because the claimant was moving to a different geographic area. The claimant testified that she was unavailable for work because she was in the process of moving.

The evidence in the record is unclear to whether the claimant has complied with Iowa Workforce Development's requirements for being available for work while out of state for an extended period. Therefore the matter of the claimant's availability for work is remanded to the UIS Division for investigation and the issuance of an appealable determination on Ms. Moser's availability for work.

DECISION:

The representative's decision dated December 20, 2010, reference 02, is reversed as modified. The portion of the determination finding the claimant refused an offer of suitable work without good cause is reversed. The issue of the claimant's availability for work is remanded to the UIS Division for investigation and the issuance of an appealable determination on the issue of the claimant's availability for work.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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