

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS P ARTWEIN
Claimant

SPRAY COPTER
Employer

APPEAL NO: 12A-UI-07262-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/13/12
Claimant: Respondent (1-R)

Section 96.5-3-a – Job Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 8, 2012, reference 01, that held it made no offer of work to claimant on April 30, 2012, and benefits are allowed. A telephone hearing was held on July 12, 2012. The claimant did not participate. Marilyn Heisel, Manager, and Caleb Gibcumb, Contract Pilot, participated for the employer.

ISSUES:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant began a work assignment as a fuel support truck driver for the employer on April 18, 2012 and completed it on April 24. It was understood this was seasonal crop spraying work. The employer did not have further work for claimant at that time. The employer made multiple attempts to contact claimant for further work assignments by telephone but was unsuccessful in reaching him. The employer had information claimant might be staying with his mother in Missouri as it had reached claimant through a temp employment agency in that state for job assignment.

Claimant was not available when called repeatedly for the hearing as the line was busy. He did not try to contact the department at any time prior to the close of the record. The department record shows his regular full-time base period employer is Fessler Carbonic Gas Co. (ER#149198) that is the employer that makes him monetarily eligible for benefits.

REASONING AND CONCLUSIONS OF LAW:

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 did not receive a suitable offer of work from the employer after he completed his last work assignment on April 24, so no job refusal disqualification is imposed.

Claimant accepted a seasonal type job and completed his first job assignment without incident on April 24. Since the employer was not successful in contacting him about any further assignment, no job refusal disqualification is imposed. The employer should note that claimant is receiving unemployment benefits by reason of his base period employment from Fessler Carbonic.

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".

The administrative law judge further concludes the issue whether claimant is able and available for work is remanded to Claims for a department fact finding. Claimant failed to respond to the employer requests about further work and he did not make himself available to address this issue or his availability for work.

DECISION:

The department decision dated June 8, 2012, reference 01, is affirmed. The claimant did not receive an offer of work on April 30, and no benefit disqualification is imposed. The issue whether claimant is able and available for work is remanded. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css