

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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CLINTON IA 52732

MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES
C/O FRICK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 04A-UI-09894-SWT
OC: 07/25/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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 claimant appealed an unemployment insurance decision dated August 31, 2004, reference 04, that concluded he failed to accept suitable work without good cause. A telephone hearing was held on October 5, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Sally Jacobs participated in the hearing on behalf of the employer. Official notice is taken of the fact that Clinton, Iowa, is a city with a population of 27,772, based on the 2000 census. 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.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment at

Plasti-Paints Inc. from March 30 to July 12, 2004. The claimant lives in Clinton, Iowa (population 27,772), and the assignment was in DeWitt, Iowa, about 20 miles from his residence. The rate of pay for the job was \$8.00 per hour. When the claimant applied for work with the employer, he specified that he could only work in Clinton or a second-shift job in DeWitt because he does not have a driver's license. His cousin worked a second-shift job at Plasti-Paints so the claimant rode with him to and from work.

After the claimant's assignment at Plasti-Paints ended, the claimant filed a new claim for unemployment insurance benefits with an effective date of July 25, 2004. His average weekly wage based on his highest quarter of earnings was \$289.08 (\$7.23 per hour).

On August 9, 2004, the claimant called the employer at 11:00 a.m. to see if the employer had any jobs for him. The staffing specialist, Sally Jacobs, offered the claimant a full time job as an order picker at the Family Dollar Distribution Center in Maquoketa, Iowa, which is about 40 miles from the claimant's residence. The rate of pay for the job was \$7.50 per hour for 40 hours of work per week. This rate of pay and the working conditions for the job are comparable to the going rate of pay for similar work in the area.

The claimant declined the job because he did not have transportation to the job in Maquoketa. Jacobs then offered the claimant a one-day job for a few hours of work at Central Siding Company in Clinton. The job paid \$7.00 per hour and was to start immediately. The claimant declined the job because he had scheduled an appointment to apply for food stamps that day, which conflicted with the job at Central Siding.

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.

The jobs at the Family Dollar Distribution Center and Central Siding were offered during the first five weeks of the claimant's unemployment insurance benefits and, therefore, only jobs offering a rate of pay of \$7.23 per hour or greater would be suitable work. The one-day job with Central Siding would not be suitable work under the unemployment insurance law.

The job at Family Dollar Distribution Center paid over \$7.23 per hour and meets the criteria of a suitable rate of pay under the law. The law, however, requires consideration of distance of the work to the claimant's residence and the prospects of securing work locally, along with the length of unemployment. At the time that the claimant declined the job, he had been unemployed for about four weeks. As of that time, a job involving a daily commute of 40 miles one-way would not be suitable especially since it is outside the area the claimant had listed when he applied for work. Clinton has a population of about 27,772, which would provide him with reasonable opportunities for finding work locally. The unemployment insurance rules provide that a claimant generally has good cause to refuse work where the claimant does not reside in the area where the work is located. 871 IAC 24.24(7).

The final issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by Iowa Code Section 96.4-3. The claimant is able to work and has been actively seeking work. His availability is limited to the Clinton area, but this would still provide the claimant with a reasonable expectation of securing employment considering the local labor market.

DECISION:

The unemployment insurance decision dated August 31, 2004, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf