

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMUEL M ALVAREZ**  
Claimant

**APPEAL NO. 06A-UI-11041-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 10/22/06 R: 02**  
**Claimant: Appellant (1)**

Section 96.5-3-a – Refusal to Accept Suitable Work

**STATEMENT OF THE CASE:**

Samuel Alvarez (claimant) appealed a representative's November 16, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with DES Staffing Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2006. The claimant participated personally. The employer participated by Kathy Anderston, Human Resources Manager, and Martha Marquez, Placement Specialist. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant refused to accept suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 17, 2002, as a temporary worker. The claimant filed a new claim for unemployment insurance benefits with an effective date of October 22, 2006. The claimant's average weekly wage during his highest quarter of wages was \$322.08.

On approximately November 1, 2006, the claimant was offered a job as a construction worker assigned to work at Echo Tech Construction. The job was full-time work of 40 hours per week and the rate of pay was \$9.00 per hour. The claimant was qualified to perform the work.

The claimant declined the work because he knew other employees working at Echo Tech Construction who received a higher hourly rate.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not accept an offer of suitable work.

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 work was offered within the first five weeks of the claimant's unemployment and was required to provide the claimant wages 100 percent of those paid to the claimant during the highest quarter of his base period. The evidence establishes that the claimant would have received at least 100 percent of his average weekly wages during his highest quarter of earnings. Based on the factors found in Iowa Code section 96.5-3-a, the work offered to the

claimant was suitable work. The claimant is disqualified from receiving unemployment insurance benefits.

**DECISION:**

The representative's November 16, 2006 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he refused suitable work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs