

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIO CINTRON

Claimant

APPEAL NO: 12A-UI-11611-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES

Employer

OC: 07/29/12

Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Julio Cintron (claimant) appealed a representative's September 20, 2012 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with an offer of work from Temp Associates (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2012. The claimant participated in the hearing and presented testimony from one other witness, Shea Barber. Darien Sloat appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work? Is the claimant able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on April 11, 2011. His most recent assignment was from May 3 through July 19, 2012. The claimant established an unemployment insurance benefit year effective July 29, 2012. Based upon his wages in the high quarter of his base period, his average weekly wage was determined to be \$371.04, and his resulting average hourly wage was \$9.28.

On Monday, August 27, the employer called the claimant at about 2:35 p.m. and offered him an overnight position. The rate of pay was \$11.00 per hour. He could have started that day if he could have reported to the business client by the 5:00 p.m. scheduled shift. However, at that time the claimant was in Chicago visiting his father in the hospital as his father had suffered a heart attack. The claimant had gone to Chicago approximately Thursday, August 23. He was in Chicago for approximately one week. The claimant informed the employer on August 27 that he was in Chicago and could not take the assignment at that time, but that he would check back with the employer when he returned to Fairfield. When the claimant checked back with the employer on or about Thursday, August 30, the assignment had already been filled.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is disqualified for refusing a suitable offer of work without good cause.

Iowa Code § 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 offer was suitable and the claimant did decline the offer at the time of the offer as he was out of town.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. A claimant who is out of town for personal reasons and is not in the labor market for the major portion of the week is not able and available for work that week. 871 IAC 24.23(25).

The reason the claimant refused the work with the employer was that he was not able and available for work at that time or for the majority of that work week. While this is good cause for refusing the offer of work and the claimant is not disqualified as a result of the refusal, he was not eligible to receive unemployment insurance benefits for that benefit week ending September 1, 2012.

DECISION:

The representative's September 20, 2012 decision (reference 03) is modified in favor of the claimant. The claimant did refuse a suitable offer of work, but it was for a good cause, so the refusal itself does not disqualify the claimant. The claimant was not able to work and available for work the week ending September 1, 2012. As of September 2, 2012 the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css