

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE J MARTINEZ

Claimant

APPEAL NO. 10A-UI-04157-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC

Employer

**Original Claim: 01/17/10
Claimant: Respondent (1-R)**

Iowa Code section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 12, 2010, reference 01, decision that allowed benefits based on an Agency conclusion that the employer made no job offer to the claimant on October 21, 2009. After due notice was issued, a hearing was held on May 3, 2010. Claimant Jose Martinez participated. Will Ortega, Account Manager, represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing.

After the hearing record had closed, the interpreter suggested to the administrative law judge that Mr. Martinez's uncooperative behavior during the hearing might have resulted from consumption of alcohol. The issue addressed in this decision is sufficiently narrow that the concern raised by the interpreter would have minimal if any impact. But, the interpreter's concerns, along with other matters raised during the hearing, make it necessary for the administrative law judge to remand this matter to the Claims Division for further proceedings.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment on October 21, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Martinez worked in two temporary employment work assignments for Cambridge TEMPositions, Inc. The second assignment ended on October 18, 2009. Mr. Martinez completed the assignment. On October 21, 2009, the employer attempted to contact Mr. Martinez at the contact telephone number Mr. Martinez had provided the employer. The employer was unable to make contact with Mr. Martinez. The employer had no further contact with Mr. Martinez.

Mr. Martinez established an "additional claim" for benefits that was effective November 8, 2009 in connection with the benefit year that had started January 18, 2009. Mr. Martinez established a new claim for unemployment insurance benefits that was effective January 17, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weight of the evidence indicates that there was no contact with Mr. Martinez on October 21, 2009, no offer of employment, and no refusal of employment. In addition, the employer's attempted contact with Mr. Martinez occurred prior to Mr. Martinez's "additional claim" for benefits. Mr. Martinez is eligible for benefits, provided he meets all other eligibility requirements.

Given Mr. Martinez's poor cooperation with the appeal hearing, it would not have made sense to try to add issues to the appeal hearing by having the parties waive formal notice on those additional issues. This matter will be remanded to address whether Mr. Martinez has been able to work and available for work, and actively and earnestly searching for new employment, since he established the additional claim for benefits that was effective November 8, 2009. The Claims Division should pay careful attention to whether Mr. Martinez has an alcohol problem that prevents him from being able and available for work and whether Mr. Martinez has engaged in independent contracting that has made him unavailable for employment. Upon remand, the Claims Division should also address whether Mr. Martinez failed to contact the temporary employment agency for reassignment under Iowa Code section 96.5(1)(j). It is unclear why this issue was not addressed earlier by the Claims Division.

DECISION:

The Agency representative's decision dated March 12, 2010, reference 01, is affirmed. There was no offer of employment on October 21, 2009 and no refusal of suitable work on that day. The claimant is eligible for benefits, provided he is otherwise eligible.

This matter is remanded to the Claims Division to address whether the claimant has been able to work and available for work, and has actively and earnestly searched for new employment, since he established the additional claim for benefits that was effective November 8, 2009. The Claims Division should also address whether the claimant failed to contact the temporary employment agency for reassignment under Iowa Code section 96.5(1)(j).

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw