

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MUKOME M TCHORE
Claimant

APPEAL NO: 11A-UI-12514-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 07/31/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Mukome Tchore (claimant) appealed a representative's September 15, 2011 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with potential employment with Kelly Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2011. The claimant participated in the hearing. Lennie Zieser appeared on the employer's behalf. Julius Njoroge served as interpreter. 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 without good cause?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 23, 2010. He worked full-time as a packager on the second shift. His last day on the assignment was December 10, 2010. Agency records indicate that there has already been a decision entered regarding the separation, a representative's decision issued on August 17, 2011 (reference 02), which concluded that the claimant was eligible to receive unemployment insurance benefits after the separation but that the employer's account would not be subject to charge based on his wages earned with the employer through December 10, 2010.

After his employment with the employer, the claimant worked with other full-time employers, most recently at an employer in Amana, Iowa, where he worked from May 4 through about July 28. There also, he worked on the second shift. Throughout his employment in 2010 with the employer and through at least August 2011 the claimant had also been attending school from 8:00 a.m. to 2:00 p.m., Monday through Friday.

After the claimant was laid off from his most recent employment on or about July 28, he established a claim for unemployment insurance benefits effective July 31, 2011. He contacted the employer on or about August 17 to indicate that he was available and interested in new employment. He indicated he still needed a second-shift position so as not to interfere with his school schedule.

On August 23, the employer offered the claimant a position as an unloader at the rate of \$9.00 per hour in a temp-to-hire position. The position was a third shift position, which would start at 12:00 a.m. and would end at 9:00 a.m. This conflicted with the claimant's class schedule, and so he declined the position.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of 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. 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.

A claimant will not be disqualified if he has refused an offer of work for good cause. Particularly given the claimant's established schedule of working second shift positions, the interference with the claimant's class schedule that the third shift position which was being offered would pose was good cause for refusing the offer of work. However, a reason constituting good cause for refusal of suitable work may still disqualify such claimant as being not available for work. 871 IAC 24.24(3).

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 person who is a full-time student might not be able and available for work. 871 IAC 24.23(5). However, the exception is where the student is "available to the same degree and to the same extent as [when he] accrued wage credits . . ." Id. The claimant's base period wage credits were earned while he was fully employed in second-shift positions. He remains able and available for full time work on the second shift. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 15, 2011 decision (reference 03) is reversed. The claimant did not refuse a suitable offer of work without good cause. He is adequately able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. Pursuant to the prior decision issued on August 17, 2011 (reference 02), the employer's account is not subject to charge.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw