

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT S POESCHL
Claimant

APPEAL NO: 11A-UI-13102-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS
Employer

OC: 03/06/11

Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Robert S. Poeschl (claimant) appealed a representative's September 30, 2011 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with an offer of work with Cambridge Tempositions (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 26, 2011. The claimant participated in the hearing. Barry Norden appeared on the employer's behalf and presented testimony from one other witness, Mike Cambridge. 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.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer on November 2, 1998. He worked full-time as a salesperson in the employer's temporary employment firm. His last day of work was July 2, 2010. His employment ended at that time due to a lack of work.

On July 26, 2011, an account manager for the employer contacted the claimant. She indicated that there was a job available for the claimant at an hourly rate of \$10.50 working at a Cedar Rapids, Iowa business client. The job required steel-toed boots, which the claimant did not have. He indicated that he would be able to get some steel-toed boots by Thursday (July 28). The account manager indicated that when the claimant got the boots, she would have him come in and watch a training video. The claimant did get the boots and called the account manager on Thursday to report that he had the boots. He indicated that he could not come in the next day to watch the video because he had a job interview in Des Moines for a position with another employer on that day, so the account manager indicated she would call the claimant the next week. The start date for the assignment was not specified.

On Monday (August 1), the account manager called the claimant and indicated that the business client had a position open that day. He responded to her that he was working another

job that day that paid \$11.00 per hour, and so would not be available for the assignment that day. The account manager responded that she would call him if another position became available on some later date. The claimant heard nothing further from the employer regarding any assignment with the business client that might have come open.

The business for which the claimant was working on August 1 was Iowa Express, 5454 Plainview Dr. N.W., P.O. Box 9001, Cedar Rapids, Iowa 52409-5264. He had made arrangements with that business' owner on July 31 to report for work on August 1. He drove a delivery route to and from LaCrosse, Wisconsin. He worked eight hours that day. He reported earning \$88.00 on his unemployment continued claim for the benefit week ending August 6. That employment did not continue after August 1. As of the date of this decision, there has not been any Agency review of that employment relationship. As of August 7, 2011, the benefits paid to the claimant have been paid under the emergency unemployment compensation (EUC) program.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3.

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 claimant did decline work with the employer on August that was to have started that day. The reason he declined the work was that he was otherwise employed elsewhere that day. Being employed elsewhere is recognized as good cause for declining an offer of work. 871 IAC 24.24(7). The claimant is not disqualified for declining the offer of employment with the employer that was to begin August 1.

If the claimant had remained in that employment after August 1, he would not have been otherwise able and available for work. 871 IAC 24.23(23). However, the claimant was not employed and was able and available for the major portion of the workweek, and so is considered able and available for work. 871 IAC 24.22(2)(h). The employer did not test the claimant's availability for work after August 1.

Benefits are allowed, if the claimant is otherwise eligible. The employer is not subject to charge for the EUC benefits paid to the claimant after August 7, 2011.

An issue as to whether there was a separation from another employer on August 1, 2011 arose during the hearing. This issue was not included in the notice of hearing for this case, and the matter will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's September 30, 2011 decision (reference 02) is reversed. The claimant did not refuse a suitable offer of work without good cause. He was able and available for work the majority of the benefit week ending August 6 and thereafter. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue involving the other employer.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw