

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARENCE E BUEHL
Claimant

APPEAL NO. 06A-UI-09902-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 05/07/06 R: 04
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Clarence E. Buehl (claimant) appealed a representative's September 29, 2006 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits due to a refusal of work from L.A. Leasing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2006. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Kristen Miller. 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 he able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer in 1998. He was inactive for a period of time before resuming taking assignments in 2005. His final assignment began on March 9, 2005, and his last day on the assignment was May 16, 2006.

The claimant established an unemployment insurance benefit year effective May 7, 2006. Agency records indicate that his average weekly wage for the high quarter of his base period was \$324.83. Based upon his base period wages, his weekly benefit amount was calculated to be \$211.00. He has filed weekly claims each week since establishing his claim, reporting wages and receiving reduced benefits for some weeks; there were never four weeks in sequence in which the claimant reported wages in excess of his eligibility, so he was never required to file an additional claim after the initial filing of his claim.

On or about July 13 the employer spoke to the claimant and inquired whether the claimant would be interested in potential assignments with another of the employer's business clients, a local printing company. The claimant did have experience in that field, and responded he might be interested in a first shift position.

On the morning of August 4 Ms. Miller, an account coordinator in the employer's Maquoketa, Iowa, office called the claimant and offered him an assignment of at least one week (40 hours) starting August 7 at the printing company business client working on the first shift at the rate of \$7.50 per hour. After the one week, there was a good potential at continuing at the business client in another temporary position either at the same rate of pay or at a rate of \$8.50 per hour. The claimant declined the offer, indicating he was waiting to see if he would be getting more work from the concrete construction employer at which he had most recently been working. However, he had no hours or work from that construction employer since about the week beginning July 2, so had been off work at least four weeks prior to the August 4 offer of work.

REASONING AND CONCLUSIONS OF LAW:

The question in this case is whether the claimant was able and available for work or if he 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.

871 IAC 24.24(4) provides in pertinent part:

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 ... 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 childcare 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.

871 IAC 24.23(20) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

The claimant may have been "temporarily unemployed" from the concrete construction employer, however, his period of unemployment from that employer exceeded four weeks by August 4 and he could no longer claim temporary unemployment status awaiting recall. 871 IAC 24.1(c)(3). Therefore, by August 4 he could no longer restrict his availability to returning to work with the construction employer.

871 IAC 24.24(14)(a) 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.

The employer is also a former employer which made an offer of work to the claimant. The job was within the claimant's capabilities and the wage was 92.36 percent of his average weekly wage. The offer therefore met the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the claimant, which was his initial claim effective May 7, 13 to 18 weeks prior to the offer, so necessitating an offer of only 70 percent of the claimant's average weekly wage. The claimant's refusal of the assignment was a refusal of suitable work. Since the offer was made on a Friday and the work would not have begun until August 7, benefits are denied as of August 7, 2006 until such time as the claimant has earned ten times his weekly benefit amount in other employment.

DECISION:

The representative's September 29, 2006 decision (reference 03) is affirmed. The claimant refused a suitable offer of work without good cause. As of August 7, 2006 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/cs