

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM B SIMPKINS
Claimant

APPEAL NO. 10A-UI-06014-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION STAFFING SERVICES INC
Employer

**Original Claim: 03/21/10
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.23(26) – Medical Report
Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 13, 2010, reference 01, that held he refused to accept suitable work with Action Staffing on March 22, 2010, and that denied benefits. A telephone hearing was held on June 9, 2010. The claimant participated. Elle Soundara, Office Manager, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant refused a recall to suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked a series of short-term labor assignments for the employer from October 28, 2009 to March 13, 2010. On March 22, Office Manager Soundara called claimant and offered him a janitorial position for third shift at Firestone to begin on March 24. The claimant would earn \$9.50 an hour and work 40 hours for what was expected to be a one- or two-week assignment. The claimant accepted the job offer, and he was advised to report for a pre-employment drug screen. The claimant's average weekly wage as determined by the department is \$154.89.

Later the same day, the claimant equivocated about accepting the job assignment to the point the employer sought a replacement. When the replacement did not report, the employer gave the claimant a further opportunity to accept the assignment, but he declined.

The claimant had suffered from a neurological health issue for the past year. Recently, the claimant was examined by a doctor who issued a medical incapacity report dated May 25. The report concludes the claimant has a chronic weakness condition with poor balance that is

permanent. The doctor states the claimant's present work capacity is limited, and he is recommending further testing.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the claimant refused an offer of suitable work with the employer on March 22, and March 23, 2010, and benefits are denied.

The claimant has a work history of short-term labor assignments leading up to the offer of March 22 for a janitorial position at Firestone that he initially accepted and then rejected. The work offer is suitable, given the claimant's employment history and prospective wages. When

the claimant rejected the initial offer, and a replacement worker failed to report, he rejected a second opportunity to accept suitable work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the claimant is not able and available for work due to a medical report dated May 25, 2010.

The claimant admitted his neurological problem has been an issue for about a year. The medical report concludes his present work capacity is limited, which effectively removes him from the labor market.

DECISION:

The department decision dated April 13, 2010, reference 01, is affirmed. The claimant is disqualified March 22, 2010 for refusing a suitable work, and an availability disqualification imposed for his inability to work based on a May 25, 2010 medical report. Benefits are denied until 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.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw