

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD L THOMAS

Claimant

APPEAL NO. 11A-UI-03000-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK &
CASINO**

Employer

OC: 1/30/11

Claimant: Respondent (2)

Section 96.4-3 – Able and Available

Section 96.5-3-A – Work Refusal

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 8, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2011. Claimant participated. Employer participated by Pam Anderson, Human Resources Recruiter. The record consists of the testimony of Pam Anderson and the testimony of Donald Thomas.

ISSUES:

Whether the claimant is able and available for work; and

Whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an entertainment company in the gaming business. The claimant was hired on September 22, 2008, as a full-time security officer. The claimant worked the overnight shift from 12:00 a.m. to 8:00 a.m. or 8:30 a.m. The claimant's last day of work was September 18, 2010. The claimant was involved in a non-work-related automobile accident on September 23, 2010.

The claimant did not have Family Medical Leave Act (FMLA) leave and was placed on layoff status by the employer.

The claimant was released to return to work without restrictions on January 27, 2011. He was offered the position of a full-time security guard. The rate of pay was the same as he had been paid prior to his layoff. The shift time was different. The claimant was offered a shift from 6:00 p.m. to 2:30 a.m. The claimant informed the employer he would have to think about this. The claimant's wife worked from 10:30 a.m. to 9:00 p.m. and there was no one to care for his two children in the evenings and on weekends. He checked into the cost of daycare and the cost was prohibitive. The claimant informed the employer that he could not take the position.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). 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 and not unemployed for failing to bump a fellow employee with less seniority. 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 child care 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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Before a claimant can be disqualified for failing to accept suitable work, there must be a determination that the claimant is able and available for work. The evidence in this case established that the claimant is only willing to take work shifts that do not overlap the hours worked by his wife. She works from 10:30 a.m. to 9:00 p.m. and thus the only hours he can work are overnight hours. The claimant has two young children and it is cost prohibitive for him to pay for childcare.

The administrative law judge concludes that the claimant has unduly limited the hours he is willing to work. He is only willing to work overnight shifts. Work as a security guard is available during the day and evening, but the claimant will not work those shifts. Iowa law further states that where availability for work is unduly limited because of not having made adequate arrangements for child care, a claimant is deemed as being unavailable for work and therefore disqualified from receiving benefits. 871 IAC 24.23(8) Because the claimant is not able and available for work, he is disqualified from receiving benefits effective January 30, 2011.

DECISION:

The decision of the representative dated March 8, 2011, reference 01, is reversed. The claimant is not able and available for work and is disqualified from receiving benefits effective January 30, 2011.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css