

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY A LANE
Claimant

APPEAL NO. 13A-UI-10189-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATHENA SERVICES INC
ABC LAWN CARE
Employer

OC: 08/18/13
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Athena Services (employer) appealed a representative's August 30, 2013, decision (reference 02) that concluded Troy Lane (claimant) was eligible to receive unemployment insurance benefits because there was no offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2013. The claimant did not provide a telephone number where he could be reached and therefore, did not participate in the hearing. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left a message for the employer twice but the employer did not return the call.

ISSUE:

The issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from September 20, 2012, to December 14, 2012. The claimant refused an offer of snow removal in the winter of 2012/2013. The claimant filed his claim for unemployment insurance benefits on August 18, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant did not refuse an offer of suitable work.

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(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The offer of work was made by the employer to the claimant in the winter of 2012-2013. The claimant filed his claim for benefits on August 18, 2013. The claimant refused work before he had a claim for unemployment insurance benefits on file. If there is no valid claim for unemployment insurance benefits on file, there can be no disqualification if work is refused. The claimant is qualified to receive benefits provided he is otherwise eligible.

DECISION:

The representative's August 30, 2013 decision (reference 02) is affirmed. The claimant is qualified to receive benefits, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css