

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A MAZE JR
Claimant

APPEAL NO: 08A-UI-08087-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPS NOW HEARLAND LLC
Employer

OC: 03/09/08 R: 02
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Offer of Work
Section 96.4-3 – Able to and Available for Work
Section 96.5 – Employment Separation

STATEMENT OF THE CASE:

Temps Now Hearland LLC (employer) appealed a representative's September 5, 2008 decision (reference 02) that concluded David A. Maze, Jr. (claimant) was eligible to receive benefits even though he declined an offer of work from the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2008. The claimant participated in the hearing. Laura Gawronski, a representative with Personnel Planners, Inc., appeared on the employer's behalf with Lisa Nicholson, the district manager, who testified for the employer. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Was the claimant able to and available for work as of July 29 and August 27, 2008?

Did the claimant refuse the employer's offers of work on July 29 and August 27 for reasons that still qualify him to receive benefits?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 9, 2008. The claimant applied to work for the employer's clients after March 9. When the claimant initially went to work for the employer, he did not indicate hours he could not work. The employer is a staffing agency.

On April 28, the employer assigned the claimant to work as a general laborer at Wal-Mart. The claimant worked 40 hours a week on first shift, 7:00 a.m. to 3:00 or 3:30 p.m. The claimant completed this job on July 11, 2008. The claimant earned \$8.00 an hour at this job.

The employer contacted the claimant on July 29 and offered him a temp to hire job that was to start immediately. This job paid \$10.00 an hour, but was a job on third shift. The claimant declined this job offer because he and his wife had just separated, and the claimant had custody of his children, 5 and 10 years old. The claimant told the employer he could only work first shift.

On August 27, the employer again contacted the claimant and offered him another job. The job the employer offered the claimant this time was a second-shift job, 6:00 p.m. to midnight. The claimant again declined this job because he has custody of his children and could only work a first-shift job.

The claimant made some attempts to find childcare that would allow him to accept second or third shift jobs. The claimant was not been successful. Currently, the claimant is able to and available to work 7:00 a.m. to 4:00 p.m. and is willing to travel 15 to 20 miles for a job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-1, 2-a. Even though the representative's decision was not about the employment separation that occurred on July 11, the hearing notice contained this issue. The facts establish the claimant became unemployed on July 11, 2008. When the claimant became unemployed there was no more work for him to do at the Wal-Mart job assignment. In this case, the claimant did not quit and the employer did not discharge him for work-connected misconduct. Therefore, as of July 13 when the claimant reopened his clam for benefits, he was qualified to receive benefits.

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. Iowa Code section 96.5-3-a. The employer offered the claimant jobs on July 29 and August 27. The jobs were suitable in every respect except the shift that was offered to the claimant. In late July, the claimant and his wife had separated and he had custody of his children, 10 and 5. As a result of the change in his marital status, the claimant was only available to work first shift. Since the claimant initially worked first shift for the employer, his refusal to accept second and third shift employment amounts to good cause in this case. Therefore, the claimant is not disqualified from receiving benefits for failing to accept jobs that were not first shift jobs.

The fact the claimant has restricted himself to only working a first-shift job, does not at this time restrict his availability. The evidence does not establish that he is looking for a tailor-made job, which could make him ineligible to receive benefits. Now if an employer offered him employment that was from 8:00 a.m. to 5:00 p.m. and the claimant declined that job offer, this refusal would disqualify him because he declined a first-shift job opportunity. If the claimant remains unemployed, he will be required to extend the hours he is available to work. Based on the facts presented, the claimant is not disqualified from receiving benefits as of July 29 or August 27, 2008.

The employer is not one of the claimant's base period employers. Therefore, during the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's September 5, 2008 decision (reference 02) is affirmed. The claimant is qualified to receive to receive benefits as of July 13, 2008, because his July 11 employment separation occurred for non disqualifying reasons. Even though the claimant refused the employer's July 29 and August 27 offers of work, he established good cause for doing so. Therefore, he remains eligible to receive benefits as of July 29 and August 27, 2008. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs