

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN J WILLIAMS**

Claimant

**APPEAL NO. 12A-UI-09905-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIVERSAL TANK & FABRICATION INC**

Employer

**OC: 07/22/12**

**Claimant: Appellant (4-R)**

Section 96.5(3) – Refusal of Work

**STATEMENT OF THE CASE:**

The claimant, John Williams, filed an appeal from a decision dated August 10, 2012, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 10, 2012. The claimant participated on his own behalf and was represented by Arthur Gilloon. The employer, Universal Tank and Fabrication, Inc. (Universal), participated by General Manager Dan Davis and Administrative Assistant Sue Kloft.

**ISSUE:**

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

**FINDINGS OF FACT:**

John Williams was laid off for lack of work by Universal Tank on April 16, 2012. There was no definite return to work date established at any time until Administrative Assistant Sue Kloft contacted the claimant in May. At that time she said he could return to work on May 21, 2012. He offered to work two days but then he had surgery on his shoulder May 23, 2012, She told him that was not acceptable and ended the call.

Mr. Williams had filed an additional claim for benefits effective April 8, 2012, and filed a weekly claim through the week ending May 26, 2012, the week in which he had surgery.

**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.

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 claimant did not refuse work but was unable to work more than two days as he had previously scheduled surgery. He had good cause for refusing the recall but may not have been able and available for work due to the surgery.

The above Administrative Code sections indicates a failure to accept work may not be a work

refusal so much as an issue of unavailability. Mr. Williams was not able and available for work the week ending May 26, 2012, because the surgery on Wednesday May 23, 2012, means he would not be available for the majority of the regular workweek.

**DECISION:**

The representative's decision of August 10, 2012, reference 03, is modified in favor of the appellant. John Williams is not disqualified as a result of his failure to accept the recall to work. But he was not available for work the final week of that claim and it has not been determined when he was fully released to return to work without restrictions. The issue of whether the claimant is able and available for work and whether he must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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