

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER WELLS

Claimant

APPEAL NO: 07A-UI-02321-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**OC: 09/24/06 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Availability for Work
Section 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Roger Wells (claimant) appealed an unemployment insurance decision dated February 27, 2007, reference 03, which held that he was not eligible for unemployment insurance benefits because he refused to accept suitable work with Advance Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2007. The claimant participated in the hearing. The employer participated through Brandi McFarland, Office Manager. 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.

ISSUE:

The issue is whether the claimant unreasonably refused a suitable offer of 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 was employed as a full-time general laborer from July 24, 2004 through September 21, 2006 and then again from October 26, 2006 through January 23, 2007. He worked second shift at \$11.50 per hour and worked an average of 43 hours per week in Greenfield, Iowa. The employer advised him he was being laid off on January 24, 2007.

The employer spoke with the claimant via telephone on January 25, 2007 and offered him a job with Farley's and Sather's Candy Company. He could work second shift and earn \$10.50 per hour or work third shift and earn \$11.00 per hour. The job was for 40 hours per week plus overtime and was located in Creston, Iowa. The claimant refused the job because he said he was not interested in driving to Creston for that amount of money.

The employer spoke with the claimant on January 31, 2007 and offered him the same job but the second shift position was paying \$11.60 per hour. The job was currently requiring employees to work 12 hour days, six or seven days a week and the claimant refused this job offer because he did not want to work that many hours per week.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

Iowa Code § 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 testified that he is able and available for work and his testimony is found credible. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

Iowa Code § 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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The employer offered the claimant employment on January 25, 2007 and January 31, 2007 and he declined both job offers. He declined the first job offer because he did not think it paid enough for him to drive to Creston, Iowa even though he had never previously put restrictions on where he was willing to work. Inasmuch as the claimant was offered employment on January 25, 2007 with wages which at least equaled 75 percent of his average weekly wage paid during the highest quarter of his base period, the administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, he is disqualified and benefits are denied as of January 25, 2007.

DECISION:

The unemployment insurance decision dated February 27, 2007, reference 03, is affirmed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as 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.

Susan D. Ackerman
Administrative Law Judge

Decision

sda/pjs