

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD M COASH
Claimant

APPEAL NO. 09O-UI-17772-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELLY SERVICES INC
Employer

OC: 01/04/09
Claimant: Appellant (4-2)

Section 96.5(3)a – Refusal of Work
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Richard Coash, filed an appeal from a decision dated August 18, 2009, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 7, 2010. The claimant participated on his own behalf. The employer, Kelly Services, participated by Staffing Supervisor Jessica Fedders.

ISSUE:

The issue is whether the claimant refused an offer of suitable work and whether he is able and available for work.

FINDINGS OF FACT:

Richard Coash filed a claim for unemployment benefits with an effective date of January 9, 2009. He had worked for Kelly Services since 1995 and during that entire time he had a limit on his availability. He could not accept assignments for jobs which were more than five miles from his residence due to lack of transportation. He generally took clerical, administrative, or office type work.

Since the summer of 2008 he had been enrolled in school at Des Moines Area Community College. On February 5, 2009, he was offered a job at Wells Fargo at Jordan Creek. He declined because he was not able to travel that far, and he was not available until after 2:00 p.m. due to his class schedule.

He was not approved for DAT and TEB by Iowa Workforce Development until July 2009 for the period May 24 through August 8, 2009.

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.

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 24.24(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The claimant refused an offer of work because it was outside of the area where he was available for work. He had worked under this restriction for a number of years and the employer had accepted it. Under the provisions of the above Administrative Code section, the refusal of work is not a disqualifying issue.

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".

871 IAC 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The claimant was not available for work from the effective date of his claim until May 23, 2009, because he was enrolled as a full-time student. He did not have approval from the agency to release him from the requirement to be able and available for work due to being in school until May 24, 2009. That approval ended August 8, 2009.

The issue of whether he is currently able and available is remanded to UIS for determination.

DECISION:

The representative's decision of August 18, 2009, reference 03, is modified in favor of the appellant. Richard Coash is not disqualified as a result of his refusal of work. But he is ineligible for benefits from January 4 through May 23, 2009, as he was not able and available for work due to being a full-time student.

The issue of whether he is able and available for work after August 8, 2009, is remanded to the UIS for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs