

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN D LUCAS

Claimant

APPEAL NO. 07A-UI-08009-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN

Employer

**OC: 07/08/07 R: 03
Claimant: Respondent (4)**

Iowa Code section 96.4(3) – Able & Available
Iowa Code section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Temp Associates - Marshalltown filed a timely appeal from the August 17, 2007, reference 02, decision that allowed benefits and that concluded the employer had not made a suitable offer of employment on July 19, 2007. After due notice was issued, a hearing was held on September 5, 2007. Claimant Shawn Lucas participated. Nancy Mullaney, Grinnell Branch Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits paid to the claimant and received Exhibit One into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 07A-UI-08010-JTT.

ISSUE:

Whether the claimant refused a suitable offer of employment on July 19, 2007.

Whether the claimant has been available for work since establishing the claim for unemployment insurance benefits that was effective July 8, 2007.

Whether the claimant has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Lucas had one assignment through Temp Associates, which assignment ended on July 1, 2007 when Nancy Mullaney, Grinnell Branch Manager, notified him that he has been released from the assignment. Ms. Mullaney initially attempted to reach Mr. Lucas at the primary contact number he had provided. Ms. Mullaney eventually contacted Mr. Lucas' girlfriend on the girlfriend's cell phone. The girlfriend notified Ms. Mullaney that Mr. Lucas was sleeping. Ms. Mullaney left a message that Mr. Lucas should not report for the assignment and should contact Ms. Mullaney on Monday, July 2.

On July 2, Mr. Lucas contacted Ms. Mullaney and she advised him that he had been released from the assignment at Montezuma Manufacturing. Ms. Mullaney and Mr. Lucas did not discuss

any new assignments. The employer did not have any assignments available for Mr. Lucas at the time, but was willing to place him in additional assignments. Ms. Mullaney instructed Mr. Lucas to contact her in "a couple days" and to check in weekly for new assignments. Ms. Mullaney stressed to Mr. Lucas the importance of maintaining a contact number at which he could be reached. Mr. Lucas advised Ms. Mullaney that his girlfriend's cell phone was now his primary contact number. Mr. Lucas' girlfriend worked and was a student. Thus, the girlfriend was often not able to convey, in a timely manner, messages left for Mr. Lucas on her cell phone. Mr. Lucas was in fact ambivalent about whether he wanted to accept another assignment through Temp Associates.

Mr. Lucas did not make further contact with the employment agency until July 11, when he spoke with Account Manager Art Heinzer and advised that he was available for additional assignments, but only assignments in Oskaloosa. Mr. Heinzer attempted to contact Mr. Lucas later the same day at the girlfriend's cell phone number. Mr. Heinzer left a voice mail message that he wanted to talk to Mr. Lucas about a possible full-time assignment. Mr. Heinzer provided no additional details in the message. Temp Associates' office closed at 5:00 p.m. Mr. Lucas called at 5:45 p.m. and left a message indicating he was returning the earlier phone call. On July 12, Mr. Heinzer left another message on the girlfriend's cell phone. Mr. Heinzer again indicated that he wanted to talk to Mr. Lucas about a possible full-time assignment. Mr. Lucas did not respond to the message.

On July 17, Mr. Heinzer attempted to contact Mr. Lucas regarding another possible assignment. Mr. Heinzer left a voice mail message on the girlfriend's phone and indicated that he wanted to talk to Mr. Lucas about a full-time, first-shift metal fabrication assignment. Mr. Heinzer attempted to reach Mr. Lucas a second time on July 17, but was again unsuccessful. Ms. Mullaney then attempted to contact Mr. Lucas via the emergency contact number Mr. Lucas had previously provided. The number belonged to Mr. Lucas' grandparents. Ms. Mullaney made four attempts to get through on the grandparents' number, but encountered a busy signal each time.

On July 18, Ms. Mullaney was able to leave a message on the grandparents' answering machine. Ms. Mullaney asked for a return call from Mr. Lucas. Ms. Mullaney indicated that the employer was trying to contact Mr. Lucas, but had not been able to contact Mr. Lucas via the girlfriend's cell phone. Mr. Lucas' grandfather went to Mr. Lucas' home and delivered the message from Ms. Mullaney. Mr. Lucas returned Ms. Mullaney's call the same day. At that time, Ms. Mullaney lectured Mr. Lucas on the need to have a reliable contact number and told Mr. Lucas that Temp Associates could not offer Mr. Lucas assignments if it could not reach him. Ms. Mullaney then discussed a possible assignment with Mr. Lucas. Ms. Mullaney advised that the assignment would be full-time, first-shift in New Sharon. Ms. Mullaney advised Mr. Lucas of the duties and that the position would pay \$11.00 per hour. Ms. Mullaney advised Mr. Lucas that the client business required an interview before the client would make the assignment available to Mr. Lucas. Ms. Mullaney ended the conversation by telling Mr. Lucas that she would be getting back to him regarding an interview time. Ms. Mullaney advised Mr. Lucas that because of the prior difficulties in reaching him, Mr. Lucas should check back with Ms. Mullaney "in the next couple days." On July 19, Ms. Mullaney learned that the client business desired an interview on Friday, July 20. Ms. Mullaney contacted Mr. Lucas' grandmother and told the grandmother that she was trying to reach Mr. Lucas regarding an interview. Temp Associates did not hear anything further from Mr. Lucas.

On July 25, Mr. Heinzer spoke with Mr. Lucas' grandmother. At that time, the grandmother indicated that she had forwarded all messages to Mr. Lucas.

Mr. Lucas established a claim for unemployment insurance benefits that was effective July 8, 2007 and has received benefits totaling \$2,488.00.

Since Mr. Lucas established the claim for benefits, Mr. Lucas has been without driving privileges. Mr. Lucas' ability to get to work is limited to his girlfriend's availability to transport him and/or the distance he can travel on his bicycle. The girlfriend's availability to transport Mr. Lucas is very limited, due to her own employment and educational pursuits. Mr. Lucas has restricted his job search and work availability to those areas of Oskaloosa he can reach by bike.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weight of the evidence indicates that Ms. Mullaney did not make a bona fide offer of employment on July 18. The evidence does indicate that Ms. Mullaney contacted Mr. Lucas on July 18, to discuss referring him for an interview so that a client business could further screen Mr. Lucas in order to decide whether to make a work assignment available to Mr. Lucas. The evidence indicates that Ms. Mullaney was never successful in communicating the July 20 interview date and time to Mr. Lucas. Ultimately, there was no actual referral communicated and there was no refusal of an offer of employment or referral.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23 provides, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment.

24.23(14) An individual is deemed not available for work because such individual cannot be contacted by the department for referral to possible employment.

24.23(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The evidence in the record establishes that since Mr. Lucas established his claim for benefits, he has restricted his availability to that area of Oskaloosa he can reach on a bike. The evidence in the record indicates that Mr. Lucas has lacked a reliable means of transportation to and from other potential employment opportunities within his area of usual employment since he established his claim for benefits. The evidence indicates that Mr. Lucas' area of usual employment included not just Oskaloosa, but also included Montezuma, some 25 miles away. The evidence indicates that Mr. Lucas lacks a reliable telephone by which he can promptly receive and respond to offers of employment or work referrals. The greater weight of the evidence indicates that Mr. Lucas is not genuinely attached to the labor market and has in fact not met the availability requirements of Iowa Code section 96.4(3) since establishing his claim for benefits. Accordingly, Mr. Lucas has been ineligible for benefits since establishing the claim that was effective July 8, 2007.

Because Mr. Lucas has received benefit for which he has been deemed ineligible, those benefits constitute an overpayment that Mr. Lucas must repay to the Agency. Mr. Lucas is overpaid \$2,488.00.

DECISION:

The Agency representative's decision dated August 17, 2007, reference 02, is modified as follows: There was no bona fide offer of suitable employment and no refusal. Thus, no disqualification will enter based on the alleged work refusal. However, the claimant has not met the availability requirements since establishing his claim for benefits and, therefore, is not eligible for benefits effective July 1, 2007. The claimant is overpaid \$2,488.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw