

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS C COOPER
Claimant

APPEAL NO: 12A-UI-12901-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
PALMER CONSULTING
Employer

OC: 01/15/12
Claimant: Appellant (4)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Marcus C. Cooper (claimant) appealed a representative's October 18, 2012 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Palmer Companies, Inc. / Palter Consulting (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on December 5, 2012. This appeal was consolidated for hearing with one related appeal, 12A-UI-13849-D. The claimant participated in the hearing. Matt Joens appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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:

Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work? Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and to date only assignment with the employer began on October 24, 2011. He worked full time on the first shift as a warehouse worker at the employer's Windsor Heights, Iowa business client at a rate of \$12.00 per hour. His last day on the assignment was January 20, 2012, when it ended for a lack of work.

On January 23, 2012 Joens, an account manager with the employer, spoke to the claimant to offer him another assignment; the job was to start on January 24 and would have been a first shift position working in shipping and receiving at an Urbandale, Iowa business client for a rate of at least \$12.00 per hour. The claimant indicated that his wife, who normally cared for their two children during the week, was on jury duty that week, so that the claimant needed to provide the children's care that week. He inquired whether the job could wait until Monday, January 30

to start, but it could not, so he indicated to Joens that he could not accept the assignment. He told Joens that he would check to see if other arrangements could be made. He did check to see if the people they used as emergency backup childcare were available, but they were not, so he did not recontact Joens to change his availability for the assignment.

The claimant established an unemployment insurance benefit year effective January 15, 2012.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work, and if so, whether that refusal disqualifies him.

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.

The employer did make a suitable offer of work to the claimant on January 23, 2012, and the claimant did decline the offer because he was not available that week due to his childcare responsibilities that week.

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.

Since the claimant declined the suitable offer of work because he was not available for work that week, he is not subject to a disqualification for refusal which would require that he requalify by earning ten times his weekly benefit amount. However, it must be determined if he was eligible to receive unemployment insurance benefits by being able and available for work.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code section 96.4-3. "The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work." 871 IAC 24.22(2). "To be considered available for work, an individual must at all times be in a position to accept suitable employment during periods when the work is normally performed." 871 IAC 24.22(2)(I). A person is considered unavailable for work "Where availability for work is unduly limited because of not having made adequate arrangements for child care." 871 IAC 24.23(8). A determination as to whether a claimant is able and available for work is subject to week to week assessment. 871 IAC 24.22; 871 IAC 24.23.

During the benefit week which ended January 28, 2012, the claimant was not able and available for work due to his child care responsibilities that week. He is not eligible for benefits that week. However, the disqualification only lasts for that one week; as of January 29 he was again able and available for work. Benefits are allowed as of that date, if the claimant is otherwise eligible.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code section 96.19-3. The claimant's base period began October 1, 2010 and ended September 30, 2011. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's October 18, 2012 decision (reference 05) is modified in favor of the claimant. There was a refusal of suitable work, but that refusal is not disqualifying. The claimant was not able and available for work for the benefit week ending January 28, 2012. He is again able to work and available for work effective January 29, 2012. The claimant is eligible to receive unemployment insurance benefits as of January 29, 2012, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css