

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SERGIO G GONZALES

Claimant

APPEAL NO. 07A-UI-01918-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLEMAN CONSTRUCTION INC

Employer

**OC: 01/21/07 R: 03
Claimant: Appellant (4)**

Section 96.5-3-a - Failure to Accept Suitable Work

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 15, 2007, reference 02, that concluded he failed to accept an offer of suitable work without good cause. A telephone hearing was held on March 12, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Coleman participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant has worked as a concrete laborer for the employer for approximately ten years. On January 12, 2007, the claimant was informed that he was laid off due to weather conditions. On January 18, the claimant talked to the owner, Brian Coleman, about shoveling snow from a basement so that some work could be done. The claimant came in for a few hours on January 19 to shovel snow. The claimant knew that the owner was going to be out of town the following week and there would be no work.

The claimant talked to Coleman on January 28. Coleman told him not worry about working the next week. The claimant told Coleman since there was no work available, he was going to visit his sister that week. The claimant, however, did not travel due to weather and road conditions.

The claimant did go to Texas to visit his sister during the week of February 11 to 16. The employer tried calling the claimant about returning to work on February 12, but he was not available because he was out of town.

The claimant spoke with Coleman on March 2. Coleman asked for help on a small project on March 3 and told him there was full-time work starting March 5. The claimant told him that he has something else he had to do at home on March 3, but he would be available to return to

work on March 5. Coleman called the claimant on March 4 and told him that the job would not be ready until March 6. The claimant reported to work on March 6.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 21, 2007. His average weekly wage based on his high quarter earnings was \$888.75.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he was not offered work on January 26. The evidence to the contrary was hearsay. The preponderance of the evidence fails to prove the claimant received an offer of suitable work on January 26, 2007. If the claimant was offered part-time work during any week, the weekly wage would not meet the minimum standard to be considered suitable work under Iowa Code § 96.5-3-a.

The next issue in this case is whether the claimant was able to work and available for work as required by the unemployment insurance law in Iowa Code § 96.4-3. The rules state that a

claimant is unavailable for work if the claimant is out of town for personal reasons for a major portion of a work week. 871 IAC 24.23(25). The claimant, therefore, was unavailable for work and ineligible for benefits for the week ending February 17 since he was out of state for a majority of the week.

DECISION:

The unemployment insurance decision dated February 15, 2007, reference 02, is modified in favor of the claimant. The claimant is not subject to disqualification for refusing suitable work. He is eligible for unemployment insurance benefits effective January 21, provided he is otherwise qualified. He is disqualified from receiving benefits for the week ending February 17, 2007, because he was not available for work during a majority of the week.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css