

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LEONARD A JOHNSON
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WESTSTAFF USA INC
C/o EMPLOYMENT TAX CONSULTING
440 W COLORADO ST #204
GLENDALE CA 91204

Appeal Number: 04A-UI-03258-B4T
OC: 02/15/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Whether claimant refused to accept suitable work
871 IAC 24.24(2)a – Whether claimant failed to apply or accept suitable work
Section 871 IAC 24.22(2)h – Whether claimant was available for major portion of the workweek.

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated March 17, 2004, reference 02, that held, in part as follows:

You are eligible to receive unemployment insurance benefits as long as you meet all the other eligibility requirements.

Explanation of decision

Our records indicate on February 23, 2004, you did not accept an offer of work with West Staff USA Inc. However, you already had obligations that prevented you from accepting the work on such short notice. The reason you did not accept the work was temporary and you were available for work for the majority of the work.

A consolidated telephone conference hearing was scheduled and held on April 16, 2004 pursuant to due notice. Leonard A. Johnson participated. Amie Lang, Placement Consultant, participated on behalf of WestStaff USA Inc.

Official notice was taken of the unemployment insurance decision dated March 17, 2004, reference 02, together with the pages attached thereto (4 pages in all). Official notice was also taken of the unemployment insurance decision dated March 17, 2004, reference 01, together with the pages attached thereto (3 pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Leonard A. Johnson was initially employed with WestStaff, USA Inc., on or about January 10, 2001. The claimant was employed to fulfill job assignments made to him by the employer.

The claimant completed several job assignments. The last job assignment from WestStaff USA Inc., was on June 22, 2001. The claimant was assigned to a position with the University of Iowa surplus store. The claimant's job duties included obtaining surplus items and stocking them at the University of Iowa surplus store facility in addition to making distribution of certain items on occasion.

The claimant's last day of work on the job was February 17, 2004. On February 17, 2004, the claimant met with Joe Hanagan, Manager of the University of Iowa surplus store. Amie Lange, Placement Consultant for WestStaff USA, Inc., was also present.

The claimant was informed that he and three other employees were being let go. The claimant was also told he was a good employee but problems had occurred in the distribution area.

Following the termination of the claimant's employment, Jennifer Mayer, a Manager of WestStaff USA, Inc., informed the claimant by telephone to report on the following day for a conversation with Joe Hanagan, Manager, and others. The claimant reported as scheduled and discussed the security at the University of Iowa surplus store. The claimant made several suggestions during the conference, which lasted approximately 15-20 minutes. As the claimant was leaving, Amie Lange, Placement Consultant, informed the claimant that there was a job assignment at Owen, Illinois on February 18, 2004. While the testimony is conflicting apparently, another job offer was made at the same time for General Mills. Both job offers were factory positions. The claimant was ill and had a doctor's appointment on February 23, 2004 because of bronchitis. The claimant was unable to report for work during the period of time from February 18, 2004 through the end of the week. In addition, the claimant had no transportation to travel from his home to Owen, Illinois where the factories were located.

On February 23, 2004, the claimant apparently held a conversation with Amie Lange, Placement Consultant. The claimant was offered a one-day assignment at Iowa Memorial Union, which the claimant refused because he had a doctor's appointment.

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 24.32(2)(h)(a)-Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

Section 24.24(2)-Job within claimant's capabilities. (a) the job offered must be within the claimant's physical capabilities and not require any undue physical skill or particular

training which the claimant does not already possess. As the period of unemployment lengthens, work which might originally have been unsuitable may become suitable.

The evidence in the record establishes that on February 18, 2003, the claimant was ill and in addition, was not able to travel the distance to Illinois to accept the job offer as an assembly line worker.

On February 23, 2003, the claimant had a doctor's appointment and was unable to accept the one-day assignment that was offered to him by Amie Lange, Placement Consultant, with WestStaff USA, Inc. The claimant therefore had obligations that prevented him from accepting the work on short notice or accepting a temporary one-day assignment.

The administrative law judge concludes that Leonard A. Johnson did not accept an offer of work with WestStaff USA, Inc., on February 23, 2004 because he already had an obligation that prevented him from accepting work on such short notice. The claimant was therefore eligible to receive benefits provided he met all other eligibility requirements on February 23, 2004 within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated March 17, 2004, reference 02, is affirmed.

kjf/b