

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

GARY B HALL
315 W LOGAN
CLARINDA IA 51632

NORTHWEST SERVICES
2332 S MAIN
MARYVILLE MO 64468

Appeal Number: 05A-UI-03705-DT
OC: 02/20/05 R: 01
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 – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Northwest Services (employer) appealed a representative's April 1, 2005 decision (reference 03) that concluded Gary B. Hall (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2005. The claimant participated in the hearing. Dennis Thompson appeared on the employer's behalf. 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:

Did the claimant refuse an offer of suitable work without good cause? Is he able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and to date only assignment began on September 1, 2004. His last day on the assignment was February 8, 2005. He had worked full time for the employer's Maryville, Missouri business client at a rate of \$8.00 per hour. The drive from the claimant's home in Clarinda to the workplace in Maryville was 42 miles.

Upon the ending of his initial assignment, the claimant established an unemployment insurance benefit year effective February 20, 2005. His weekly benefit amount was calculated to be \$277.00, based upon his base period high quarter average weekly wage of \$448.37. The employer, through someone other than Mr. Thompson, the employer's manager, contacted the claimant on February 14, 2005 and offered him a position at another business client in Maryville. The parties' testimony differed as to whether the offer was for a position at business client E at a rate of either \$8.25 or \$8.36 per hour, or was for a position at business client K at a rate of either \$7.00 or \$7.25 per hour. The claimant declined the position, indicating that it was too little to pay for the cost of transportation, particularly with increased gasoline prices.

On March 31, 2005, Mr. Thompson attempted to contact the claimant but reached someone, probably the claimant's mother, and left a message for the claimant to call as there was work available. On April 1, 2005, Mr. Thompson again attempted to reach the claimant but reached someone, probably the claimant's fiancée, and left a message for the claimant to call as there was work available. The claimant did not get either of these messages.

The claimant had not been making his own contact with the employer as at the end of February 2005, his truck engine had blown up, and he had not been able to afford replacement or repair. The vehicle he is able to use for local transportation is not sufficiently reliable for regular transportation to and from Maryville. The claimant has been able to make multiple local job contacts, and would have transportation as necessary to allow him to get to and from local work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused a suitable offer of work.

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(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.

871 IAC 24.24(8) provides:

- (8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

As to the February 14, 2005 offer, the claimant did not have an open claim at the time an offer of work was made, so any refusal would not be effective to disqualify him from benefits. As to

the attempted March 31 and April 1, 2005 offers, there was no bona fide offer of work and no definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

The next issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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(4) provides:

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

(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. (See subrule 24.24(7)).

The claimant did lose his means of transportation to Maryville, Missouri, 42 miles from his home. However, while the claimant had worked in Maryville, it was not his area of usual employment. The claimant was able and available for work within his area of usual employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 1, 2005 decision (reference 03) is affirmed. The claimant did not refuse a suitable offer of work within his benefit year. He is able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

ld/sc