

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LONNIE L FAHLENKAMP
Claimant

APPEAL NO. 09A-UI-01117-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ADVENTURE STAFFING & PROFESSIONAL
SERVICES LLC**
Employer

**OC: 11/02/08 R: 01
Claimant: Respondent (1)**

Section 96.5-3-a – Offer of Suitable Work/ Refusal

STATEMENT OF THE CASE:

The employer appealed a decision of a representative dated January 15, 2009, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 18, 2009. The claimant participated. The employer participated by Robert Hardy, Human Resource Assistant.

ISSUE:

The issue in this matter is whether the offer of work was suitable and whether the claimant had good cause to refuse it.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant did not accept an offer of work with Adventure Staffing & Professional Services on November 4, 2008 as it had only been one week since the claimant filed his most recent new or additional claim and the job offer did not provide wages of at least 100 percent of the claimant's average weekly wage. Mr. Fahlenkamp had previously been assigned to work at the Eaton Corporation through Advance Services and had been paid \$15.00 per hour and subsequently \$12.00 per hour. The claimant was offered and took a position with Morton Buildings at the rate of \$11.85 per hour. When that most recent assignment at Morton Buildings came to an end on October 31, 2008 the claimant was subsequently offered employment at \$11.94 per hour at Polaris Industries. The claimant rejected the offer based upon the rate of pay and the approximate 60 mile drive each day that it required from his residence to the client employer location. The previous job assignments at Eaton and Morton were in the same city as where the claimant resides.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Fahlenkamp refused with good cause an offer of work. It does.

The evidence in the record establishes that the claimant had previously accepted assignments in the same city as his residence and had been paid between \$12.00 and \$15.00 per hour. The offer made to Mr. Fahlenkamp on November 4, 2008 was not within 100 percent of the claimant's average weekly wage. In addition the job location required approximately 30 miles travel each way during winter months. The claimant therefore refused the offer only because of the rate of pay which was not 100 percent of his weekly average wage but also because the distance required to travel during inclement weather.

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(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.

For the reasons stated herein the administrative law judge concludes that the claimant has established good cause for refusing this offer of work. Unemployment insurance benefits are allowed providing the claimant meets other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated January 15, 2009, reference 02, is affirmed. The claimant did not accept an offer of work on November 4, 2008 with good cause. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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