

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW A TOMKINSON**

Claimant

**APPEAL NO. 07A-UI-05116-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER TEMPORARY SERVICES**

Employer

**OC: 04/08/07 R: 01  
Claimant: Respondent (1/R)**

Section 96.5-3-a – Refusal of Work

**STATEMENT OF THE CASE:**

Manpower Temporary Services (claimant) appealed a representative's May 7, 2007 decision (reference 01) that Matthew A. Tomkinson was qualified to receive unemployment insurance benefits even though he did not accept the employer's April 9, 2007 offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 6, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Todd Ashenfelter, a staffing specialist, appeared on the employer's behalf.

At 10:30 a.m. the claimant contacted the Appeals Section for the 9:00 a.m. hearing. He had just received documents TALX sent to him by UPS. Prior to receiving these documents, the claimant had no idea there was a hearing scheduled. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there good cause to reopen the hearing?

Did the claimant refuse an offer of suitable work with good cause?

**FINDINGS OF FACT:**

The claimant completed a job assignment for the employer on April 4, 2007. He established a claim for unemployment insurance benefits during the week of April 8, 2007. Based on wage credits in his base period, the claimant's average weekly wages is \$802.66.

The claimant earned \$11.67 per hour at the job he completed on April 4 for the employer's client. The claimant worked as machinist at this job. On April 9, the employer contacted the claimant about another job. This job was as an assembly worker on the day shift. The claimant could earn \$9.40 an hour. The job started immediately and was a temp-to-hire position. The claimant declined the employer's April 9 job offer because the wage was too low.

The claimant did not receive the hearing notice the Appeals Section mailed on May 22, 2007. The claimant learned about the hearing after he received a UPS delivery from TALX. TALX sent the claimant various documents to the claimant. The claimant did not learn about the scheduled June 6 hearing until after the hearing had been closed. The claimant's address of record did not indicate a post office box number and the local postmaster sends back mail when a post office box number is not listed. The claimant did not receive the hearing notice the Appeals Section mailed on May 22 or the representative's May 7, 2007 decision that the employer appealed.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). When a party does not receive notice of a scheduled hearing, the party has established good cause to reopen the hearing. In this case, the hearing will not be reopened, because the decision is not adverse to the claimant.

A claimant is not qualified to receive unemployment insurance benefits if he refuses an offer of suitable work without good cause. A factor that must be considered is whether the job offered meets certain wage criteria. Iowa Code § 96.5-3-a. When a claimant has been unemployed for five weeks, the offer of work is suitable if the wage offered equals 100 percent of the claimant's average weekly wage during his base period. Since a weekly wage of \$376.00 is not the same as \$802.00 per week, the work the employer offered the claimant is not suitable when the claimant had only been unemployed about one week. Therefore, even though the claimant declined the employer's offer of work on April 9, he remains qualified to receive unemployment insurance benefits.

When the employer appealed, the employer really wanted the Claims Section to investigate and issue a decision that addressed whether the claimant's employment separation was for disqualifying or nondisqualifying reasons. As a result, the reason for the claimant's employment separation is remanded to the Claims Section.

#### **DECISION:**

The representatives' May 7, 2007 decision (reference 01) is affirmed. The claimant declined the employer's April 9 offer of work with good cause. Therefore, as of April 8, the claimant remains qualified to receive benefits, provided he meets all other eligibility requirements. The issue concerning the reasons for the claimant's April 4 employment separation and whether he is eligible to receive benefits is remanded to the Claims Section to investigate.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw