

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARRY K ESLINGER**  
Claimant

**APPEAL NO. 11A-UI-14676-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**OC: 10/09/11**  
**Claimant: Respondent (1-R)**

Section 96.5(3) – Refusal of Suitable Work

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 8, 2011, reference 01, decision that allowed benefits and that concluded the claimant's refusal of work on October 3 would not disqualify him for unemployment insurance benefits. After due notice was issued, a hearing was held on December 5, 2011. Claimant Barry Eslinger participated. Darin Sloat, Branch Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative record (DBRO) regarding when the claim was effective and benefits disbursed to the claimant.

**ISSUES:**

Whether Mr. Eslinger's work refusal on October 3, 2011 disqualifies him for unemployment insurance benefits.

Whether Mr. Eslinger refused an offer of suitable work on October 13, 2011.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Barry Eslinger established a claim for unemployment insurance benefits that was effective October 9, 2011 and received benefits. Those benefits included benefits for the week that ended October 15, 2011.

On October 3, 2011, prior to Mr. Eslinger's application for unemployment insurance benefits, the Temp Associates branch in Fairfield contacted Mr. Eslinger and offered a long-term work assignment. Mr. Eslinger rejected the offer due to the physically demanding nature of the work.

On October 13, 2011, the Temp Associates branch in Fairfield left a telephone message for Mr. Eslinger about a work assignment that was to start the next day. Mr. Eslinger did not receive that message until a few days later. At the time Mr. Eslinger missed the October 13 call and message, he was in the process of relocating away from the Fairfield area.

## REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without justification is disqualified for benefits until the claimant earns ten times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code rule 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 ... it must first be established that a bona fide offer of work was made to the individual by personal contact ... 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.

Iowa Administrative Code rule 871 IAC 24.24(1)a provides:

*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.*

[Emphasis added.]

The October 3, 2011 offer and refusal did not occur within Mr. Eslinger's benefit year, which began on October 9, 2011. Thus the October 3 refusal would not disqualify Mr. Eslinger for unemployment insurance benefits.

The October 13, 2011 call and message to Mr. Eslinger did not constitute a bona fide offer of employment because it did not involve personal contact. Instead, there was a message that Mr. Eslinger received too late. Where there is not offer, there can be no refusal.

Mr. Eslinger remains eligible for benefits, effective October 9, 2011 provided he is otherwise eligible.

## DECISION:

The Agency representative's November 8, 2011, reference 01m is affirmed. The claimant's work refusal on October 3, 2011 occurred outside the claim year and did not disqualify him for benefits. There was no bona fide offer of suitable work on October 13, 2011.

This matter is remanded to the Claims Division for adjudication of the September 28, 2011 separation and for investigation into and determination of whether the claimant has met the work availability requirements since October 9, 2011.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css