

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAUL SANCHEZ GARCIA
Claimant

APPEAL NO. 14A-UI-03911-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANDREW CONTRACTING LLC
Employer

OC: 12/08/13
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.5(3) – Work Refusal

STATEMENT OF THE CASE:

Saul Sanchez Garcia filed a timely appeal from the April 4, 2014, reference 01, decision that denied benefits for the three-week period of March 9, 2014 through March 29, 2014. After due notice was issued, a hearing was held on May 1, 2014. Mr. Sanchez Garcia participated. Rod Andrew represented the employer. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. The parties waived formal notice concerning the hearing and the issues referenced above.

ISSUES:

Whether the claimant was able to work and available for work during the three-week period of March 9, 2014 through March 29, 2014.

Whether the claimant refused recall to suitable work on or about March 9, 2014 or between that date and March 29, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Saul Sanchez Garcia is employed by Andrew Contracting, L.L.C., as a full-time concrete finisher. The employer's work is weather-dependent. The employer laid off Mr. Sanchez on or about November 23, 2013. Mr. Sanchez Garcia established a claim for benefits that was effective December 8, 2013 and received benefits that included benefits for the period of March 9, 2014 through March 29, 2014.

In mid-March 2014, the employer attempted to recall Mr. Sanchez Garcia and his brother-in-law to the employment. The employer left a message with the brother-in-law's wife. Mr. Sanchez Garcia lives with his brother-in-law. Mr. Sanchez Garcia was anxious to return to the employment and was unaware of the message the employer left with the brother-in-law's wife. At the end of March 2014, Mr. Sanchez Garcia became aware that some coworker's had returned to work for the employer. On or about March 29, 2014, Mr. Sanchez Garcia went to

the home of Rod Andrew, the business owner, and asked to return to the employment. On Monday, March 31, 2014, Mr. Sanchez Garcia returned to the full-time employment.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Admin. Code r. 871-24.24(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.

The weight of the evidence indicates that there was no bonafide offer of recall to the employment until March 29, 2014 when Mr. Sanchez Garcia contacted the employer and requested to return to work. The message the employer left with Mr. Sanchez Garcia's brother-in-law's wife was insufficient to constitute personal contact with Mr. Sanchez Garcia. There was no refusal of recall on the part of Mr. Sanchez Garcia.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that during the period in question, Mr. Sanchez Garcia was able to work, available for work, and awaiting the opportunity to return to the employment. Mr. Sanchez Garcia satisfied the work availability requirements during the period of March 9, 2014 through March 29, 2014 and is eligible for benefits during that period, provided he is otherwise eligible.

DECISION:

The claims deputy's April 4, 2014, reference 01, decision is reversed. The claimant was able and available for work during the period of March 9, 2014 through March 29, 2014. The claimant did not refuse an offer of recall to suitable employment. The claimant is eligible for benefits during the three-week period of March 9, 2014 through March 29, 2014, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs