

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE W CLIFTON
Claimant

APPEAL NO. 08A-UI-08300-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

OC: 06/01/08 R: 04
Claimant: Respondent (2-R)

Section 96.5-3-a – Refusal to Accept Suitable Work
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated September 11, 2008, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on October 1, 2008. The claimant participated. The employer participated by Mike Thomas, account manager.

ISSUE:

The issues in this matter are whether the claimant refused to accept an offer of suitable work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on June 1, 2008. The claimant's most recent assignment had been as a janitorial worker at the rate of \$11.00 per hour working 40 hours per week at a client employer location approximately 16.2 miles from his residence. Mr. Clifton was removed from that assignment by the client employer for poor performance. The temporary employment service did not have another assignment immediately available for the claimant.

A number of attempts were made by Temp Associates to contact Mr. Clifton to offer him additional job assignments; however, the claimant did not return messages left by the temporary employment service. On July 23, 2008, Temp Associates sent the claimant a certified letter (See Exhibit One) offering the claimant light industrial work at the rate of \$8.70 per hour in a location approximately 20.3 miles from his residence. Mr. Clifton was instructed to call the temporary service by July 28, 2008, if he had an interest in accepting the position.

The claimant did not accept the assignment, as he at the time wished to accept only assignments in the Davenport-Blue Grass, Iowa areas. Mr. Clifton had no objection to the type

of work, but felt that because the pay was less per hour and he would have to purchase gasoline to travel to the site, he did not wish to accept it.

The hourly amount offered in the position was within 75 percent of the average weekly wage for insured work that had been paid to Mr. Clifton in the quarter of the base period where his wages were the highest. The claimant has now limited himself to janitorial type positions paying \$9.00 to \$10.00 per hour in and around Davenport, Iowa.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant had good cause for refusing this offer of work. It does not.

The evidence in the record establishes that the hourly pay offered by Temp Associates for the light industrial position was \$8.70 per hour, and that amount is within 75 percent of the claimant's previous \$11.00-per-hour rate that he had received while being assigned by the same temporary employment company. Mr. Clifton had been unemployed for approximately eight weeks at the time and drawing unemployment insurance benefits. The claimant had not indicated to Temp Associates that he had newly placed limitations on the distance he was willing to travel to work or the type of work that he would accept. The evidence in the record establishes that the type of employment offered to Mr. Clifton was not objectionable but that his refusal was based solely upon the factors that the pay per hour was less and that he now did not wish to drive further than the immediate Davenport or Blue Grass areas for employment. The evidence establishes that although the offered assignment was approximately four miles farther from the claimant's resident, the additional distance was not substantial when compared with the previous assignment that Mr. Clifton had accepted with the company.

As a person's period of unemployment lengthens, they are expected to readjust their expectations and reduce limitations on the type of work that they're willing to accept and not to increase limitations on what would be acceptable employment.

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.

Based upon the length of Mr. Clifton's unemployment, the type of previous employment that he was willing to accept, the rate of pay based upon his weeks of unemployment, and the relatively small increase in the distance to work, the administrative law judge concludes that the claimant has, without good cause, failed to accept suitable work.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated September 11, 2008, reference 02, is reversed. The claimant has, without good cause, failed to accept suitable work and is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The administrative law judge remands the matter of overpayment to the Claims Divisions for a determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw