

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD J CLARY

Claimant

APPEAL NO. 15A-UI-03930-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILL CREEK APARTMENTS

Employer

OC: 10/05/14

Claimant: Respondent (4)

Iowa Code Section 96.5(3) – Work Refusal
Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2015, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible based on an Agency conclusion that the claimant had good cause for refusing work on February 16, 2015 due to the distance to the job. After due notice was issued, a hearing was held on May 7, 2015. Claimant Chad Clary participated. Chad Corbett represented the employer and presented additional testimony through Gregory Jasper. The parties waived formal notice on the issues of whether the claimant refused an offer of suitable work without good cause and whether the claimant has been able to work and available for work since he established the additional claim for benefits that was effective February 8, 2015. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant.

ISSUES:

Whether Mr. Clary refused an offer of suitable work without good cause.

Whether Mr. Clary has been able to work and available for work within the meaning of the law since establishing his claim for benefits.

Whether Mr. Clary has been overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mill Creek Apartments is headquartered in Camanche, Iowa and operates rental apartments in 50 locations in eastern Iowa and western Illinois. Chad Clary has worked for the employer during two separate employment periods as a maintenance worker and painter. Mr. Clary has at all relevant times resided in Clinton. The most recent period of employment began in February 2014 and has continued to the present. The employment is generally full-time, Monday through Friday, but sometimes offers less than full-time hours. Mr. Clary's immediate supervisor is Chad Corbett, Maintenance Supervisor. Mr. Clary contacts Mr. Corbett daily to learn where he is to report for work. Mr. Clary generally works as part of a crew. Mr. Clary has

at all relevant times been without a driver's license. Mr. Clary has biked to work 10 miles or closer to his home in Clinton. When the work involves traveling greater distance, Mr. Clary is dependent on family, friends and coworkers for transportation to and from work. The employer has not agreed to provide Mr. Clary with transportation to and from work. The employer does reimburse employees who drive a certain distance to get to job sites.

The employer has sent Mr. Clary to work at various locations in Clinton, Camanche, Bettendorf, DeWitt, Le Claire, as well as in Savanna, Illinois and Sterling, Illinois. Savanna is 22 miles due north of Clinton. DeWitt is about the same distance west of Clinton.

During the weeks leading up to February 11, 2015, the employer assigned Mr. Clary to work in DeWitt and Mr. Clary caught a ride with a coworker. Effective February 11, 2015, the employer temporarily ended work at the DeWitt location because the project building lacked heat and the outside temperature was dangerously cold. The employer had four employees, including Mr. Clary working at the DeWitt site. On February 12, Ms. Corbett notified Mr. Clary that the employer was sending the crew to work in Savanna, Illinois. The three other crew members, one of whom lived in Savanna, began reporting for work in Savanna. Mr. Clary lacked a means to get to Savanna. During the period of Thursday, February 12, 2015 through Tuesday, March 10, 2015, the employer continued to have work for Mr. Clary in Savanna and Mr. Clary continued to be unable to get there. On February 16, Mr. Clary had asked Mr. Corbett whether the employer had any other employees in Clinton with whom Mr. Clary might be able to ride to and from Savanna, but the employer did not have any other employees from the Clinton area working in Savanna at that time. Effective Wednesday, March 11, 2015, the employer recommenced work at the DeWitt site and Mr. Clary returned to work at that site.

While Mr. Clary was off work, he waited to return to the employment with Mill Creek Apartments and did not look for other work.

Mr. Clary established an additional claim for benefits during the week of February 8-14, 2015. Mr. Clary did not receive any benefits for that week because his reported wages exceeded his weekly benefit amount by more than \$15.00. For the weeks ending February 21, February 28 and March 7, 2015, Mr. Clary reported zero wages and Workforce Development disbursed \$214.00 in weekly benefits. For the week of March 8-14, 2015, Mr. Clary reported \$160.00 in wages and Workforce Development disbursed \$107.00 in benefits.

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 Administrative Code rule 871 IAC 24.24(4) states as follows:

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 If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept 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.

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.

Iowa Admin. Code r. 871-24.23(4), (18) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The evidence indicates that the employer had work available for Mr. Clary throughout the period when Mr. Clary's additional claim was active, February 8, 2015 through March 28, 2015. On February 12, 2015, the employer offered Mr. Clary work in Savanna for the period of February 12 through March 10, 2015. Mr. Clary had good cause, based on his lack of transportation, for refusing that work. However Mr. Clary's transportation issues caused him to not be available for work within the meaning of the law during the period when his additional claim for benefits was effective. Mr. Clary continued to be attached to the employment and did not seek other employment. The employer had historically assigned Mr. Clary to work in communities 20 miles or more from Mr. Clary's home. The nature of the employer's business, and Mr. Clary's employment were such, that the employer reasonably expected Mr. Clary to be available for work at the various job sites where he was needed, including Savanna. In other words, the geographical area where the employer had historically sent Mr. Clary to work constituted his usual work area, not just DeWitt. The employer had no agreement to provide transportation, but offered mileage reimbursement. Mr. Clary never pursued mileage reimbursement for those times when he had to enlist the assistance of a family member or friend.

Mr. Clary did not meet the availability requirement for the period of February 8, 2015 through March 14, 2015 and was not eligible for benefits for that period.

Iowa Code section 96.3(7) provides that if a claimant receives benefits and is deemed ineligible for benefits, the claimant must repay the benefits and Workforce Development must recover the benefits. Mr. Clary has been overpaid \$749.00 in benefits for the period of February 8, 2015 through March 14, 2015. Mr. Clary must repay those benefits.

DECISION:

The March 23, 2015, reference 02, decision is modified as follows. The claimant had good cause for refusing suitable work on February 12, 2015. The claimant did not meet the availability requirement for the period of February 8, 2015 through March 14, 2015 and was not eligible for benefits for that period. The claimant was overpaid \$749.00 in benefits for the period of February 8, 2015 through March 14, 2015. Mr. Clary must repay those benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs