

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHAEL A TAYLOR
2009 – 7TH ST APT 3
DES MOINES IA 50314

KELLY SERVICES INC
999 W BIG BEAVER RD
TROY MI 48084 4716

Appeal Number: 05O-UI-11531-DWT
OC: 03/20/95 R: 02
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Michael A. Taylor (claimant) appealed a representative's September 9, 2005 decision (reference 08) that disqualified the claimant from receiving benefits as of August 24, 2005, because the claimant refused an offer of suitable work from Kelly Services, Inc. (employer). A hearing was held on October 4, 2005. The claimant did not participate in the hearing. Based on the information in the administrative record, an administrative law judge issued a decision holding the claimant ineligible to receive benefits for the weeks ending August 21 through October 8, 2005. The claimant appealed this decision. The Employment Appeal Board remanded the matter to the Claims Section for a new hearing because the claimant did not receive notice about the October 4 hearing.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on November 29, 2005. The claimant participated in the hearing. Heidi Brown, a staffing coordinator, appeared on the employer's behalf. Based on the

evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant available to work on August 24, 2005?

Should the claimant be disqualified from receiving benefits after declining the employer's August 24, 2005 offer of work?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 20, 2005. The claimant last worked for the employer on June 5, 2005. The claimant had been working light industrial jobs. Based on tests the claimant previously completed, the employer determined the claimant had the skills to do data entry work. When the claimant worked for the employer he worked first shift and told the employer he wanted first-shift assignments.

Prior to August 24, 2005, the claimant registered and started taking classes to prepare him for his child's birth and to learn how to take care of his newborn child. The claimant attended class 4:00 to 6:00 p.m. three days a week. The classes lasted until mid or late September.

On August 24, the employer offered the claimant a job that was to start the next day. The job, entering data, paid \$10.00 an hour, and the hours were 4:00 to 10:00 pm. The employer anticipated the job would last through September 14, 2005. The claimant informed the employer he was willing to work, but he could not work second-shift hours because of the classes he took at Iowa Lutheran.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. Before a claimant can be disqualified for refusing an offer of suitable work under Iowa Code § 96.5-3-a, he must be able to and available for work. 871 IAC 24.23 (4).

The evidence shows the claimant was not available to work second shift hours. The claimant was more than willing to work day hours, but the employer only had a second-shift assignment. The law presumes a claimant is not available to work when he is not willing to work during the hours in which suitable work for the claimant is available. 871 IAC 24.23(16). The claimant established compelling personal reasons for not being available to work second-shift hours. Since the claimant had been unemployed a number of weeks, the pre-natal classes he was taking made him unavailable to accept a suitable offer of work that could have lasted until September 14. Under these facts, the claimant is not available to work the weeks ending August 27 through September 17, 2005. Therefore, as of September 18, 2005, the claimant is eligible to receive benefits.

DECISION:

The representative's September 9, 2005 decision (reference 08) is modified in the claimant's favor. The claimant is not disqualified for declining the employer's August 24, 2005 suitable offer of work. Instead, the claimant is not eligible to receive benefits for the weeks ending

August 27 through September 17, 2005, because he was not available to work. As of September 18, 2005, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements.

dlw/kjw