

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY J WESTPHAL**  
Claimant

**APPEAL NO. 09A-UI-09324-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – MARSHALLTOWN**  
Employer

**Original Claim: 12/07/08  
Claimant: Respondent (4)**

Iowa Code section 96.5(3)(a) – Refusal of Suitable Work  
Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 24, 2009, reference 02, decision that allowed benefits based on an Agency conclusion that the claimant had good cause for refusing a May 7, 2009 offer of employment. After due notice was issued, a hearing was held on July 30, 2009. Claimant Timothy Westphal participated. Nancy Mullaney, Grinnell Manager, represented the employer. The administrative law judge took official notice of the Agency's administrative records (DBRO) of benefits disbursed to the claimant and claimant's base period earnings.

**ISSUE:**

Whether the claimant refused to accept a suitable offer of employment without good cause.

Whether the claimant has been able to work and available for work since May 7, 2009.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Timothy Westphal last performed work for the employer on December 4, 2008.

On May 7, 2009, the employer contacted Mr. Westphal and left a message regarding a potential offer of employment. Mr. Westphal returned the call the same day and spoke with Art Heinzer, Account Associate. Mr. Heinzer told Mr. Westphal about a second shift position at Priority Plastics in Grinnell. Mr. Heinzer told Mr. Westphal that the work would pay \$8.00 per hour and the work hours would be 2:45 p.m. to 11:15 p.m., Monday through Friday. Mr. Heinzer told Mr. Westphal that the customer wanted him to start the following day, Friday, May 8, 2009. Mr. Westphal told Mr. Heinzer that he needed to look into transportation, but agreed to start on May 8, 2009.

On May 8, Mr. Westphal traveled from his home in Montezuma to an aunt's home in Iowa City to collect a truck that belonged to Mr. Westphal's mother. The truck soon broke down. Mr. Westphal had his mother notify Temp Associates that he would not be able to report to the

new assignment that day. Mr. Westphal's mother contacted the employer and suggested that Mr. Westphal be allowed to start on Monday, May 11, 2009. The employer told Mr. Westphal's mother that Mr. Westphal should contact the employer to discuss the possibility of a Monday start. Mr. Westphal made no further contact with the employer.

Since the May 7-8, 2009 contact with the employer, Mr. Westphal has lacked transportation. Mr. Westphal has resided at all relevant times in Montezuma, some 22 miles from Grinnell. Mr. Westphal has lived in Montezuma for a year, but has never held employment in that community. Mr. Westphal has applied for only a few positions in Montezuma. Mr. Westphal continues to lack transportation outside of Montezuma.

Mr. Westphal established an original claim for benefits that was effective December 7, 2008. Mr. Westphal has claimed benefits since that date. For the weeks ending May 9, 16, 23, and 30, 2009, Workforce Development disbursed \$361.00 in weekly regular unemployment benefits to Mr. Westphal. During the week ending June 6, Workforce Development disbursed \$48.37 in regular benefits to Mr. Westphal, which exhausted his maximum benefit amount. The total amount of regular benefits disbursed for this period was \$1,492.37. Mr. Westphal established a claim for extended unemployment compensation (EUC) that was effective June 7, 2009. For the period of June 7, 2009 through the week ending August 8, 2009, Workforce Development disbursed EUC benefits to Mr. Westphal that totaled \$3,249.00. For the benefit week that ended May 9, 2009 through the benefit week that ended August 8, 2009, Workforce Development has disbursed additional federal stimulus unemployment insurance benefits to Mr. Westphal totaling \$375.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant who refuses suitable work without good cause is disqualified for benefits until he has worked and earned wages from insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See Iowa Code section 96.5(3)(b).

871 IAC 24.24(4) provides 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 and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for 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 section 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".

871 IAC 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.

Where a claimant lacks transportation from his residence to the area of his usual employment, the claimant is deemed not to have met the availability requirements of the law. See 871 IAC 24.23(4).

The weight of the evidence indicates that Mr. Westphal never actually refused to report to the work assignment. Instead, Mr. Westphal lacked the ability to report because he lacked transportation to the assignment. Had there been a refusal, the lack of transportation would have provided good cause for refusing the employment.

The weight of the evidence indicates that at least since the benefit week that ended May 9, 2009, Mr. Westphal has lacked transportation to the area of usual employment. The area of usual employment consisted of communities outside Montezuma to which Mr. Westphal would commute. These included Grinnell. Mr. Westphal has never worked in Montezuma and the community of Montezuma did not constitute his area of usual employment. The administrative law judge concludes that Mr. Westphal has not met the work availability requirements of Iowa Code section 96.4(3) since the benefit week that ended May 9, 2009. Accordingly, Mr. Westphal is ineligible for unemployment insurance benefits effective the week that ended May 9, 2009. Mr. Westphal will continue to be ineligible until he has reliable transportation to the area of his usual employment.

The weight of the evidence also indicates that since the week ending May 9, 2009, Mr. Westphal has failed to make an active and earnest search for employment. Mr. Westphal testified that he had made but a few job contacts since the week ending May 9, 2009. The failure to make an active and earnest search for employment would also make Mr. Westphal ineligible for benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because Mr. Westphal has received unemployment insurance benefits at a time when he did not meet the eligibility requirements of Iowa Code section 96.4(3), the benefits Mr. Westphal received for the period constitute an overpayment of benefits, which Mr. Westphal must repay to Iowa Workforce Development. For the benefit week ending May 9, 2009 through the benefit week ending August 8, 2009, Mr. Westphal is overpaid \$1,492.37 in regular unemployment insurance benefits, \$3,249.00 in extended unemployment compensation (EUC) benefits, and \$375.00 in federal stimulus unemployment benefits. The total overpayment is \$5,116.37.

**DECISION:**

The Agency representative's decision dated June 24, 2009, reference 02, is modified as follows. The claimant did not refusal suitable employment on May 8, 2009. Since the week ending May 9, 2009, the claimant has not met the work availability requirements of Iowa Code section 96.4(3) due to a lack of transportation. Since the week ending May 9, 2009, the claimant has also failed to meet the work search requirements of Iowa Code section 96.4(3). The claimant is ineligible for benefits effective the week that ended May 9, 2009. For the benefit week ending May 9, 2009 through the benefit week ending August 8, 2009, the claimant is overpaid \$1,492.37 in regular unemployment insurance benefits, \$3,249.00 in extended unemployment compensation (EUC) benefits, and \$375.00 in federal stimulus unemployment benefits. The total overpayment is \$5,116.37.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw