

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

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HELPING HANDS TEMPORARY SERVICES
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Appeal Number: 04A-UI-09052-SWT
OC: 07/11/04 R: 02
Claimant: Respondent (1)

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 96.5-3-a - Failure to Accept Suitable Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 12, 2004, reference 04. A telephone hearing was held on September 17, 2004. The claimant participated in the hearing. Arlene Wenzel participated on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides temporary employees to client businesses. The claimant began working for the employer in November 2003. His last assignment was working at Barilla America. His rate of pay was \$10.60 per hour.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 11, 2004, because he was working fewer hours so his weekly wage was less than his weekly benefit amount of \$310.00.

The claimant worked twelve hours on July 26. On July 27, 2004, the employer called the claimant and offered him a four-hour per day job on July 28 and 29, that involved cleaning mixing machines and door seals. The claimant told the person offering him the work that kind of wanted to wait to see if work was available in another department. The claimant in fact was offered and accepted eight hours of work per day for July 29, 30, and 31 in the department and on the shift he normally worked.

An unemployment insurance decision was mailed to the employer's last known address of record on August 10, 2004. The decision concluded the claimant was not subject to disqualification for refusing work on July 27, 2004, and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 20, 2004. A second decision was mailed to the employer on August 12, 2004, that also concluded the claimant was not subject to disqualification for refusing work on July 27, 2004, but stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 22, 2004.

The owner of the business, Arlene Wenzel, received the decision within the ten-day period for appealing the decision. The employer filed a written appeal on August 23, 2004, which is after the time period for appealing had expired. The employer delayed in filing her appeal because she became confused after receiving two decisions, one on August 10 and one on August 12 stating the claimant was not subject to disqualification for failing to accept work offered on July 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The Agency issued two identical decisions regarding one work refusal. In my judgment the later decision extended the time for appealing the refusal decision until August 22, which since

it fell on a Sunday, would make the appeal deadline August 23. The appeal should be considered timely.

The issue in this case is whether the claimant is subject to disqualification under Iowa Code section 96.5-3-a for failing to accept an offer of suitable work without good cause. Under the rules interpreting section 96.5-3-a, in order for a claimant to be disqualified, there has to be a bona fide offer of work and a definite refusal. 871 IAC 24.26. In this case, there was a bona fide offer of work, but the claimant's response that he "kind of" wanted to wait for work in the department and on shift he normally work falls short of a definite refusal of work. The claimant's conduct in working full shifts on four shifts during the week is consistent with an employee who is interested in working. The claimant is not subject to disqualification for refusing suitable work or for being unavailable for work under Iowa Code section 96.4-3.

DECISION:

The unemployment insurance decision dated August 12, 2004, reference 04, is affirmed. The appeal was timely. The claimant is not subject to disqualification for refusing work.

saw/tjc