

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL V LOPRESTI**  
Claimant

**APPEAL NO. 07A-UI-04951-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**  
Employer

**OC: 04/01/07 R: 01  
Claimant: Respondent (1-R)**

Section 96.5(3)a – Refusal of Work

**STATEMENT OF THE CASE:**

The employer, Manpower, filed an appeal from a decision dated May 3, 2007, reference 02. The decision allowed benefits to the claimant, Michael Lopresti. After due notice was issued, a hearing was held by telephone conference call on May 31, 2007. The claimant provided a telephone number of (712) 370-4550. That number was dialed at 9:01 a.m. and the only response was a voice mail. A message was left notifying the claimant the hearing would proceed without his participation unless he called the toll-free number prior to the close of the record. By the time the record was closed at 9:10 a.m., the claimant had not contacted the Appeals Section and did not participate. The employer participated by Staffing Specialist Todd Ashenfelter.

**ISSUE:**

The issue is whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

Michael Lopresti filed a claim for unemployment benefits with an effective date of April 1, 2007. His average weekly wage during his base period is \$658.55. The claimant was contacted by Manpower on April 10, 2007, and offered a long-term, temp-to-hire assignment over 30 miles distance from his home at a weekly wage of \$430.80. He refused because of the distance and the rate of pay.

The record was closed at 9:10 a.m. At 9:35 a.m. the claimant called in response to the message left on his voice mail. He was in the state of Massachusetts and using a cell phone which did not have good reception, contrary to the recommendation against the use of cell phones on the notice of hearing.

Mr. Lopresti is out of state from May 30 until June 6, 2007.

## REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was offered work during the second week of his unemployment claim which paid less than 100 percent of his average weekly wage during his base period. Under the provisions of the above Code section, it was by definition not suitable work and his refusal is not a disqualifying event.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant did not follow the recommendations on the notice of hearing not to use a cell phone. As a result, the cell phone did not function properly in his location and he did not participate in the hearing. This does not constitute good cause to reopen the hearing and the claimant's request to reopen the hearing is denied.

The issue of whether the claimant is able and available for work while he was out of state should be remanded for determination.

**DECISION:**

The representative's decision of May 3, 2007, reference 02, is affirmed. Michael Lopresti is qualified for benefits, provided he is otherwise eligible. The issue of the claimant's eligibility for benefits while he was out of state is remanded to the Claims Section for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw