

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL KAMARA
Claimant

REMEDY INTELLIGENT STAFFING INC
Employer

APPEAL 14A-UI-11272-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/27/13
Claimant: Respondent (1)**

Iowa Code §96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed an appeal from the October 20, 2014 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2014. Claimant participated. Employer participated through Julie Coughlin, Branch Manager.

ISSUES:

Did the claimant refuse a suitable offer of work and is he able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was assigned to work in the Cedar Rapids area where he was able to take the bus to and from his assignment. The employer knew when they hired claimant in April 2010 that he did not drive and would be dependent upon public transportation to get to and from work. The claimant was able to work long term at his prior assignment at General Mills while relying upon public transportation.

On October 3 the claimant was offered a full-time second shift position at Frontier performing light industrial work for \$11.50 per hour. The claimant refused the job because Frontier is located more than 20 miles outside Cedar Rapids and no public transportation was available for him to take to get to and from work.

Also on October 3, 2014 the claimant was offered a first-shift full-time position performing light industrial work at Worley Warehouse. The claimant was willing to work there but he could not work first shift as he would need to take a bus downtown and transfer in order to get to the plant. Since the buses do not begin running until 5:30 a.m. and he was to start work at 6:00 a.m. it was physically impossible for him to be on time to work. The claimant had not worked first shift at all during his four years of employment with this employer. The claimant refused the assignment because he could not be on time to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work.

Iowa Code § 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, who 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.

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".

The employer knew that the claimant would be dependent upon public transportation when he was hired. He had not worked any prior first shift assignments. The claimant had demonstrated that he was able to work using public transportation in the Cedar Rapids area. Under these circumstances the administrative law judge concludes that the offers of work made to the claimant were unsuitable. The claimant is able to and available for work in the city of Cedar Rapids using public transportation on the second shift. Benefits are allowed.

DECISION:

The October 20, 2014 (reference 03) decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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