

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN D DEBOLT
Claimant

APPEAL NO. 06A-UI-09043-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VALLEY PLUMBING DBA
RHINERS PLUMBING CO INC**
Employer

**OC: 06-25-06 R: 02
Claimant: Appellant (1)**

Iowa Code section 96.4(3) – Able and Available
Iowa Code section 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 1, 2006, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on November 27, 2006. The claimant did participate. The employer did participate through Daniel Geneser, Department Manager.

ISSUES:

Did the claimant refuse to accept suitable work?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant on August 15, 2006. The claimant was offered work as a plumber's helper at \$17.00 per hour for 40 hours per week. After six months the claimant would have been given holiday benefits and after one year of work, vacation benefits. He was to start work on August 17, 2006. The offer was made in person by Daniel Geneser when the claimant finished interviewing for the job. The claimant accepted the job, but then failed to report for work on August 17, 2006 when he was to start working because he did not have a valid driver's license or transportation to get to work. The only reason the claimant did not work on August 17, 2006 was because he did not have transportation to work. Claimant's average weekly wage is \$772.83. The offer was made in the sixth through twelfth week of unemployment. Claimant declined the offer because he was not available for work due to lack of transportation.

The claimant now lives with his parents and has transportation, but he has suffered a non-work-related seizure disorder for which he is still under a physician's care and is physically unable to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did decline a suitable offer of work because he was not available.

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.

871 IAC 24.24(4) provides:

(4) 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 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7)).

The offer of work was suitable, but the reason for the failure to accept the work was because claimant was not available for work because he did not have transportation to and from work. Therefore, claimant is not disqualified from receiving benefits, but is not eligible for the period from August 17, 2006 to date of hearing, as he remains ineligible. Benefits are withheld until such time as claimant makes himself available for work. When the claimant is released to return to work by his physician he should notify his local workforce office.

DECISION:

The September 1, 2006, reference 07, decision is affirmed. Claimant did decline a suitable offer of work but was unavailable at the time. Benefits are withheld effective August 17, 2006 until such time as the claimant makes himself available for work.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs