

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY D HOOVER

Claimant

APPEAL NO. 07A-UI-06767-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN

Employer

**OC: 05/20/07 R: 02
Claimant: Respondent (1)**

Section 96.5(3)a – Refusal of Work

STATEMENT OF THE CASE:

Temp Associates filed an appeal from a representative's decision dated July 5, 2007, reference 05, which held that no disqualification would be imposed regarding Gary Hoover's June 15, 2007 refusal of work. After due notice was issued, a hearing was held by telephone on July 26, 2007. Mr. Hoover participated personally. The employer participated by Nancy Mullaney, Manager, and Art Heinzer, Account Manager. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Hoover refused an offer of suitable work from Temp Associates.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hoover was employed by Temp Associates from September 29, 2006 until May 2, 2007. He was assigned to work full time for Montezuma Manufacturing in Montezuma, Iowa.

On June 15, 2007, Mr. Hoover was offered an assignment with United McGill in Grinnell, Iowa. He would have been required to interview and undergo testing with the client company before placement. The assignment was for 40 or more hours each week and paid from \$14.00 to \$14.50 per hour. The assignment could have resulted in regular employment with United McGill. Mr. Hoover declined the assignment because he did not want to commute from his home in Indianola to Grinnell. The parties estimate the distance from Indianola to Grinnell as 70 to 80 miles.

Mr. Hoover filed a claim for job insurance benefits effective May 20, 2007. The average weekly wage paid to him during that quarter of his base period in which his wages were highest was \$564.17.

REASONING AND CONCLUSIONS OF LAW:

An individual who refuses an offer of suitable work is disqualified from receiving job insurance benefits. Iowa Code section 96.5(3)a. The administrative law judge must first determine if there was a bona fide offer of work. Mr. Hoover was offered the opportunity to interview and undergo testing with United McGill. The fact that he had to interview suggests that United McGill would have the opportunity to reject him as a candidate. Although Temp Associates may have been satisfied that he would have been selected by United McGill, the fact remains that he had to interview for the job before a definite offer could be made.

Even assuming that the offer was bona fide, the administrative law judge must consider other factors. The wages offered had to meet the percentage criteria set out in section 96.5(3)a. The work offered on June 15 was offered during the fourth week following Mr. Hoover's May 20, 2007 claim for benefits. As such, the work had to offer wages of at least 100 percent of the average weekly wage paid to him during that quarter of his base period in which his wages were highest. In other words, the job had to pay at least \$564.17 in order to be considered suitable. The work offered paid from \$14.00 to \$14.50 per hour. The administrative law judge has no basis on which to conclude that Mr. Hoover would have been paid the highest amount. The work was for at least 40 hours per week and may have involved overtime on some occasions. The administrative law judge cannot include overtime in determining the amount of pay for the job at United McGill as overtime was not guaranteed.

At \$14.00 per hour for 40 hours each week, the work offered on June 15 paid \$560.00 per week. Since this amount is less than \$564.17, the work was not suitable work within the meaning of the law. Even assuming that the \$4.17 difference in pay could be disregarded as inconsequential, there is also the issue of the distance of the job from Mr. Hoover's home. An individual is not disqualified from receiving benefits if the work refused was outside the area in which he resides. 871 IAC 24.24(7). The assignment in Grinnell would have involved at least a 140 mile commute for Mr. Hoover, resulting in a financial hardship.

For the reasons cited herein, the administrative law judge concludes that the work offered to Mr. Hoover was not suitable work within the meaning of the law based on the wages and the location of the work. As such, no disqualification is imposed for the refusal.

DECISION:

The representative's decision dated July 5, 2007, reference 05, is hereby affirmed. No disqualification is imposed for Mr. Hoover's refusal of work with Temp Associates on June 15, 2007 as the work was not suitable work within the meaning of the law. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css