

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM A HERRING
Claimant

**L A LEASING INC
SEDONA STAFFING**
Employer

APPEAL NO. 10A-UI-06246-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**Original Claim: 01 /03/10
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available
Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 20, 2010, reference 02, that held he refused to accept suitable work with the employer on March 9, 2010, and that denied benefits. A telephone hearing was held on June 8, 2010. The claimant participated. Chad Baker, Workers' Compensation Administrator, and Sammy Teel, Account Manager, participated for the employer.

ISSUES:

Whether the claimant refused a recall to suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant last worked for the employer on assignment that he completed January 10, 2010. The employer did not protest the claimant's unemployment claim, as it had no work to offer him.

The employer had a third-shift work assignment available at Plastic Products that paid \$9.45 per hour for a 40-hour work week. The employer attempted to contact the claimant by telephone on March 9, 2010 to communicate the work offer. The employer tried two numbers on file for the claimant, and both numbers had been disconnected. The employer mailed a postcard to communicate the job offer on March 15 to the claimant's most recent address of record. The claimant did not receive the card. The claimant had moved from the address the employer used to send the card. The employer did not check with the department to determine the claimant's current address of record.

REASONING AND CONCLUSIONS OF LAW:

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".

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 administrative law judge concludes that the employer failed to communicate to the claimant any offer for suitable work, and no disqualification is imposed.

The law places the burden on the employer to communicate an offer of work to the claimant, which was not accomplished in this case. More than two months had passed from the time the claimant filed his claim to when the employer attempted to reach him with an offer of work. When the employer could not reach the claimant by telephone, it failed to check with the department to confirm claimant's address of record for receiving benefits to use as its mailing address for a post card the claimant never received.

DECISION:

The department decision dated April 20, 2010, reference 02, is reversed. The employer did not communicate to the claimant an offer of suitable work on March 9, 2010, and no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw