

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERRICK J DAVIDSON
Claimant

APPEAL NO: 12A-UI-14344-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M & M CONSTRUCTION
Employer

OC: 10/21/12
Claimant: Appellant (2/R)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Derrick J. Davidson (claimant) appealed a representative's November 27, 2012 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after an October 29, 2012 refusal of work from M & M Construction (employer). Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on January 9, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer responded to the hearing notice and indicated that Maynard Melchert would participate as the employer's representative with one other witness. When the administrative law judge contacted Mr. Melchert for the hearing, he agreed that the administrative law judge should make a determination based upon a review of the available information.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The claimant started working for the employer in November 2007. He worked full time as a laborer. His last day of work was January 27, 2012. He voluntarily quit as of that date. He quit to become a private contractor for another business. As determined in the concurrently issued decision in appeal 12A-UI-14343-DT, the separation was disqualifying, but since the January 2012 separation the claimant has requalified for unemployment insurance benefits through wages from another employer.

The claimant had an at least temporary separation from his other employer on or about October 19, 2012. On October 29, 2012, this employer contacted the claimant and offered him 40 hours of work per week as a laborer at the rate of \$13.51 per hour. According to the notes made by the Claims representative who conducted the fact-finding interview, the claimant acknowledged, "Ya, he called me and I talked to him, he offered me a job but I didn't take it because I didn't want to do that work anymore." In his appeal the claimant further asserted that "I refused work from M & M Construction because I'm temporarily laid off from C's Landscape

and Design” and referenced his understanding that a person on temporary layoff was not required to search for or accept other work.

After the claimant’s employment with C’s Landscape & Design at least temporarily ended on October 19, 2012, he established a new unemployment insurance benefit year effective October 21, 2012. Under that claim year the Agency at least initially classified the claimant as a “Group 3” claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

The offer made by the employer to the claimant on October 29, 2012 was suitable. However, the claimant was exempt from the requirement to perform a work search or accept work at the time the offer was made.

Rule 871 IAC 24.2-1-c provides in pertinent part:

All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. The claims taker will then assign a group code to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. The group codes are: . . .

(3) Group “3” claimants are workers who are . . . temporarily unemployed for a period, verified by the department, not to exceed four consecutive weeks, due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual’s regular “employer.” This group pertains only to those individuals who worked full-time and will again work full-time if the individual’s employment, although temporarily suspended, has not been terminated. After a period of temporary unemployment, claimants in this group are reviewed for placement in group “1,” “2,” “5,” or “6.”

(Emphasis added.)

Further, Iowa Code § 96.4-3 provides in pertinent part:

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 . . . temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". . . .

Iowa Code § 96.19-38-c defines temporary unemployment as follows:

An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

(Emphasis added.)

At the time the employer made its suitable offer of work to the claimant on October 29 and the claimant refused the offer, the claimant was within the four weeks after being classified as being on a temporary layoff from his most recent employer. As a result, he was exempt from the requirement that he accept a suitable offer of work in order to avoid disqualification. Benefits are therefore allowed, if the claimant is otherwise eligible. As previously determined, the employer's account is not subject to charge for any benefits that might be paid to the claimant.

An issue has arisen as to whether the claimant should still be entitled to an exemption from the work search and acceptance requirements because his "layoff" has now exceeded four weeks. The matter will be remanded for review for potential placement in Group "1," "2," "5," or "6.

DECISION:

The representative's November 27, 2012 decision (reference 02) is reversed. The claimant did refuse a suitable offer of work, but because he was exempt from the work search requirement at the time of the offer and refusal, his refusal is not disqualifying. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. Because the prior separation was disqualifying, the employer's account is not subject to charge. The matter is remanded to the Claims Section for review of the group classification.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css