

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICKY D TERRELL
Claimant

APPEAL NO. 10A-EUCU-00763-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPECTRUM RESOURCES
Employer

OC: 12/31/06
Claimant: Appellant (3-R)

Iowa Code § 96.5(3)a – Work Refusal
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 11, 2010 (reference 01) decision that denied benefits based upon a refusal of suitable work on July 1, 2010. After due notice was issued, a telephone conference hearing was held on October 5, 2010. Claimant participated. Employer participated through Joanie Hunley. This issue involves the claim year effective October 26, 2008, although the referenced claim year in the representative's decision is December 31, 2006.

ISSUE:

The issue is whether an offer of work was made, if claimant failed to apply for or refused an offer of suitable work and, if so, whether the refusal was for a good cause reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant by Hunley on July 1, 2009. No offer of work was made in 2010. He worked for Spectrum Resources at an assignment from June 8 through 14, 2009 as a laborer at City Gardens and during the week of June 17, 2009 he worked in an assignment at CertaPro as a laborer. During that week he got kidney stones and was unable to work the following week. Hunley contacted him for work during the first week of July 2009 and offered another assignment as a laborer at CertaPro at \$10.00 per hour for full-time temporary work. He declined, saying he was going out on his own. There was no communication thereafter, so the employer terminated the employment relationship. The wage offered for the job was comparable to the prevailing rate of pay for similar work in the Des Moines area at the time. Claimant's average weekly wage is \$715.06. The offer was made after the 18th week of unemployment.

He claimed benefits but did not report income for the two weeks ending June 20, 2009 while he was working in temporary employment. He claimed benefits while unable to work the week ending June 27, 2009, due to having kidney stones.

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, 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 offer was unsuitable, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. However, claimant's testimony was generally called into question because of his failure to report wages during weeks in which he worked for Spectrum Resources. He was unavailable for work the two weeks ending June 20, 2009, because he was working; he was unable to work the week ending June 27, 2009, because of medical issues;

and he was unavailable to work the week ending July 4, 2009, and thereafter, because he was engaged in self-employment. Benefits are withheld effective June 7, 2009.

The matter of failure to report wages and claiming benefits while working is remanded to the Investigation and Recovery Unit for action. The calculation of the overpayment amount is remanded to the Claims Section.

DECISION:

The August 11, 2010 (reference 01) decision is modified in favor of the respondent. Claimant did not refuse a suitable offer of work but was unavailable for work while claiming benefits effective June 8, 2009. Benefits are withheld effective June 7, 2009.

REMAND:

The fraud and overpayment issues delineated in the findings of fact and reasoning and conclusions of law are remanded to the Investigations and Recovery and Claims sections of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw