

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANASTACIO R MENDOZA-GODINO
Claimant

APPEAL NO. 15A-UI-01287-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 11/09/14
Claimant: Respondent (5)

Section 96.5(3) – Work Refusal
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 28, 2015, reference 02, decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged; based on an Agency conclusion that the claimant had good cause for refusing suitable work on January 12, 2015, based on the wage offered. After due notice was issued, a hearing was held on February 24, 2015. Claimant Anastacio Mendoza-Godino participated. Michael Payne represented the employer. Spanish-English interpreter Olga Esparza represented the employer. Exhibits One through Four were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and the claimant's weekly claims.

ISSUES:

Whether the claimant refused an offer of suitable employment on or about January 12, 2015 without good cause.

Whether the claimant has been able to work and available for work since January 12, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Advance Services, Inc. (ASI) is a temporary-employment agency. Gracie Ramirez, is the ASI Human Resources Coordinator onsite at the Syngenta Seeds facility in Slater. The claimant most recently performed work for the employer in a full-time temporary work assignment at Syngenta Seeds, Inc., in Slater. The claimant started that assignment on October 3, 2014 and completed the assignment on November 14 2014. The claimant's work hours in the assignment had been 7:00 a.m. to 3:00 p.m., Monday through Friday and additional work as needed on the weekends. In that assignment, the claimant performed painting and maintenance work. While the claimant worked in the assignment, the claimant resided in Cambridge. At the time the assignment came to an end, the claimant understood that Syngenta Seeds would recall him

to a new assignment sometime between January 15 and 20, 2015. The claimant's permanent home is in San Juan, Texas. After the claimant completed the assignment, and after he established the claim for unemployment insurance benefits that was effective November 9 2014, he headed home to Texas.

On January 9 2015, Ms. Ramirez telephoned the claimant, who was still in Texas. Ms. Ramirez told the claimant that Syngenta Seeds had a different assignment for him that was to start on January 12, 2015. The assignment would offer the same pay and hours as the claimant had previously received, but would involve bagging rather than shop work. The claimant did not find the change in duties, the pay, or the hours disagreeable. However, the claimant told Ms. Ramirez that the call on January 9, 2015 for an assignment that was to start on January 12, 2015 was short notice given his need to travel from Texas to Iowa. The claimant told Ms. Ramirez that he could accept the assignment if it could start a day or two later. Ms. Ramirez agreed to notify the client business and call the claimant back. The claimant did not report for the assignment that was set to start on January 12, 2015.

On January 13, 2015, Ms. Ramirez telephoned the claimant and told him that the client understood that it was too short notice for the claimant. Ms. Ramirez told the claimant that the client had decided to wait and offer a different assignment to the claimant later. The claimant said that was fine.

Since January 12, 2015 and through the February 24, 2015 appeal hearing date, the claimant made two job contacts per week.

For the six-week period of January 11 through the benefit week that ended February 21, 2015, the claimant received \$390 in benefits each week.

REASONING AND CONCLUSIONS OF LAW:

The employer did not present testimony from anyone with personal knowledge of the claimant's contact with ASI or Syngenta. The employer had the ability to present testimony through Ms. Ramirez and elected not to present such testimony. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer's hearsay evidence was insufficient to rebut the claimant's testimony concerning his contact with Ms. Ramirez.

Iowa Code § 96.5-3-a and b provide:

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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Iowa Admin. Code r. 871-24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

- (14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code § 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

Iowa Admin. Code r. 871-24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The weight of the evidence indicates that the employer did make a bona fide offer of work on January 9, 2015. The work was suitable. The weight of the evidence also indicates there was no definite refusal. The employer contacted the claimant on January 9, 2015 regarding an assignment set to start on January 12, 2015. The proposed start date was earlier than the expected recall date the client business had provided to the claimant in November 2014. At the time of the January 9 telephone call, the claimant was in San Juan, Texas, more than 1200 miles and two days' travel time. The claimant did not refuse the assignment. The claimant merely made a reasonable request for another day or two to make the long trip from his home in Texas to Iowa. Even if the evidence had established a definite refusal of the assignment, the claimant had good cause given the short notice and the distance he would have to travel.

Iowa Code § 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 Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market.

Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence indicates that the claimant has been able to work, available for work, and has been actively and earnestly seeking new employment by making the required number of job contacts in Texas.

DECISION:

The January 28, 2015, reference 02, decision is modified as follows. The proposed assignment was suitable work. The claimant did not make a definite refusal of the assignment that was to start on January 12, 2015. Even if the evidence had established a definite refusal of the assignment, the claimant had good cause to refuse the assignment, given the short notice and the distance he would have to travel to start the assignment. The claimant has been able to work and available for work since January 12, 2015. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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