

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACH A WELDON
Claimant

APPEAL NO: 12A-UI-00005-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES MARSHALLTOWN
Employer

**OC: 12/19/10
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available
Section 95.5-3-a – Job Refusal
871 IAC 24.24(10) – Distance to a New Job

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 23, 2011, reference 03, that held he refused an offer of suitable work with Temp Associates on November 28, 2011, and benefits are denied. A telephone hearing was held on January 30, 2012. The claimant participated. Nancy Mullaney, Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUES:

Whether claimant refused an offer of 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 worked for the employer on assignment at Cascade Lumber as a full-time production worker from September 26, 2011 until he completed it on November 10. He submitted a pre-employment application stating he had reliable transportation and he was applying for a job at Cascade. Claimant had friends who worked at Cascade that could give him a ride to work. Claimant was not asked to disclose he did not have a vehicle and/or a valid driver license.

The employer offered him a further assignment at De Jong Manufacturing located in New Sharon on November 28 that claimant declined due to transportation issues. The job location was about 39 miles from claimant's residence in Knoxville, and he did not have anyone who could drive him to work.

Claimant regained his driver license about 2 ½ weeks ago (about January 13) and he has a vehicle to get to work. Claimant has not received any further offer of work from the employer.

CONCLUSIONS OF LAW:

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 administrative law judge concludes that the claimant had a good cause to refuse suitable work with the employer on November 28, 2011, and benefits are allowed.

Department regulation 871 IAC 24.24(10) regarding distance to a new job states: Without a prior specific agreement between the employer and employee the employee's refusal to follow the employer to a distant job site shall not be a reason for a refusal disqualification.

Claimant showed his willingness to work by accepting an employer job offer at Cascade knowing that he could overcome his lack of a driver's license and vehicle by having friends who

worked there be his transportation. The employer never inquired about his license or transportation issue nor did it have any employment agreement that he needed to be available to work at other locations should he complete the Cascade Lumber assignment.

Claimant declined the DeJong job because it was 39 miles from his residence and he didn't have transportation to get there that is a good cause for refusal.

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".

The administrative law judge further concludes no availability disqualification is imposed. Since the employer failed to have an agreement with claimant on the distance he would be willing to travel in the pre-employment process, a failure to have transportation for a 39-mile trip to work is not disqualifying. It assumed since he was accepting a job that required him to travel from Knoxville to Pleasantville that he had transportation from any distance. Claimant was never put on notice that when or if his job ended at Cascade that he would be required to work at or near the same distance from Knoxville. He had short notice after his Cascade assignment ended to the job offer to let the employer know at what distance he could make travel arrangements.

Since he has recently obtained his license and a vehicle, there is no ongoing availability (transportation) issue.

DECISION:

The department decision dated December 23, 2011, reference 03, is reversed. Claimant had a good cause for refusing suitable work on November 28, 2011. No availability disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs