

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN L RUPE
Claimant

APPEAL NO: 12A-UI-01852-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

**OC: 11 /27/11
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 16, 2012, reference 02 ,that held claimant did not refuse a suitable offer work on December 12, 2011, and benefits are allowed. A telephone hearing was held on March 12, 2012. The claimant participated. Nancy Mullaney, Grinnell Office Manager, participated for the employer.

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 witness, and having considered the evidence in the record, finds: The claimant began work for the employer on June 30, 2010, and worked a variety of assignments through November 17, 2011. Claimant did not work for any other employer during this period.

Beginning December 8, then on December 12, and thereafter, the employer offered claimant full-time work on assignment at Brownell's at 45-hours a week. He would be paid \$9.00 an hour for a 40-hour workweek (\$360.00), and time and one-half for 5 hours (\$67.50) for a total of \$427.50. He looked into the matter to see if he could obtain employment with Brownell's, but upon failing that effort, he did not accept the employer's work offer. His average base period weekly wage is \$513.38.

Claimant became self-employed on or about January 28, 2012 and he ceased claimant unemployment benefits.

CONCLUSIONS OF LAW:

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 claimant did not refuse suitable work with the employer on December 12, 2011, and benefits are allowed.

The claimant last worked for the employer on November 17, 2011 and he filed his unemployment claim on November 27. In order for the employer's December 8 – 12 employment offer (\$427.50) to be suitable it must be at 100 percent of his average base period employment weekly wage within the first 5-weeks of unemployment that is \$513.38.

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".

The administrative law judge further concludes that the claimant is not able and available for work effective January 29, 2011 due to self-employment that places a restriction on his employability. Claimant quit claiming the week ending January 28, 2012 due to his self-employment.

DECISION:

The department decision dated February 16, 2012, reference 02, is modified. The claimant did not refuse suitable work on December 12, 2011, and benefits are allowed, provided the claimant is otherwise eligible. The claimant is not able and available for work effective January 29, 2012 due to self-employment.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css