

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHAWN M PLUCAR
2324 BURNETT AVE
AMES IA 50010

MANPOWER INC OF DM
517 FIFTH AVE
DES MOINES IA 50309

Appeal Number: 04A-UI-02994-B4T
OC: 01-11-04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Whether the Claimant Refused to Accept Suitable Work
Section 96.6-2 Whether the Appeal is Timely

STATEMENT OF THE CASE:

Shawn M. Plucar appealed from an unemployment insurance decision dated February 16, 2004, reference 01, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits because the records indicated on January 13, 2004 he refused to accept suitable work.

A consolidated telephone conference hearing was scheduled and held on April 6, 2004, pursuant to due notice. Shawn M. Plucar responded to the notice of hearing by providing a cell phone telephone number where he could be contacted at the time of the scheduled hearing. Numerous calls placed to the number provided disclosed that the claimant was not available to

participate in the hearing. Darcy Felt, Staffing Specialist with Manpower Inc. of Des Moines, participated on behalf of the employer.

Official notice was taken of the unemployment insurance decision dated February 16, 2004, reference 01, together with the page attached thereto (2 pages in all). Claimant's Exhibit A was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that:

Timeliness of Appeal Issue:

Shawn M. Plucar was employed with Manpower Inc. of Des Moines from May 9, 2003 through January 9, 2004 after having completed numerous job assignments.

The claimant completed his last job assignment with Manpower Inc. of Des Moines on January 9, 2004 and filed an initial claim for benefits having an effective date of January 11, 2004. Subsequently, a decision of the representative, bearing reference 01, was dated and mailed to the parties of record on February 16, 2004. Said decision disqualified the claimant from receiving benefits because he allegedly refused to accept suitable work with Manpower Inc. of Des Moines on January 13, 2004. Said decision also contained a caveat or warning that required an appeal to be postmarked by February 26, 2004 or received by Iowa Workforce Development Appeals Section by that date.

Exhibit A admitted into evidence discloses that the claimant signed a letter of appeal on February 25, 2004 and left it with a local Workforce Development office on said date. Said appeal letter also discloses that the local Workforce Development office did not send the claimant's letter of appeal to the Appeals Section until March 17, 2004 by fax.

The administrative law judge finds that a timely appeal has been filed by the claimant.

The administrative law judge has jurisdiction of the parties hereto and of the subject matter hereof necessary to enter upon a determination relating to the alleged refusal to accept suitable work.

Refusal to Accept Suitable Work:

Shawn M. Plucar had accepted numerous job assignments provided to him by Manpower Inc. of Des Moines throughout a period of time from May 9, 2003 through January 9, 2004. The claimant completed his last job assignment which was with Mediacom in Ames, Iowa. Judy, a supervisor at Manpower Inc. of Des Moines, allegedly left a message for the claimant on or about January 14, 2004 indicating there was a thirty-day appointment available at Sauer Dansdroff. The claimant was then contacted allegedly by Judy, the supervisor. The claimant informed her that he had accepted a position with Union Pacific on January 9, 2004 and would not be able to accept a thirty-day job assignment with Sauer Dansdroff.

The claimant then filed a claim for benefits having an effective date of January 11, 2004 and received benefits for one week only being the benefit week ending January 17, 2004. Claimant's letter of appeal being Exhibit A admitted into evidence established that he had accepted a job with Union Pacific on January 9, 2004. Subsequently the claimant was offered a

temporary position at Sauer Dansdroff which was contingent on his availability to work for approximately four weeks.

REASONING AND CONCLUSIONS OF LAW:

Timeliness of Appeal Issue:

The evidence establishes that the claimant filed a timely appeal with a local Workforce office on February 25, 2004 that was not faxed to the Appeals Section until March 17, 2004. The administrative law judge concludes a timely appeal was filed and the Department has jurisdiction to enter upon a hearing regarding the refusal to accept work issue.

Refusal to Accept Suitable Work:

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.

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871 IAC 24.22(2)f & h 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.

- f. Part-time worker, student--other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing other employment during the same hours and for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.
- (h) Available for part of week. Each case must be decided on its own merits. Generally if the individual is available for the major portion of the workweek the individual is considered to be available for work.

The record in this matter clearly establishes that the claimant had completed numerous job assignments provided to him by Manpower Inc. of Des Moines during the period of time from May 9, 2003 through January 9, 2004. The claimant completed all job assignments and during the week beginning January 11, 2004 the claimant informed the employer that he had accepted a job with Union Pacific on January 9, 2004. Subsequently the claimant was offered a position with a company known as Sauer Dansdroff on or about January 14, 2004. The job offer was contingent to being available to work approximately four weeks. The claimant was refused the position because he was going to be available for one week only due to accepting a position with Union Pacific.

The administrative law judge concludes that Shawn M. Plucar did not refuse to accept an offer of suitable work with Manpower Inc. of Des Moines during the benefit week ending January 17, 2004 within the intent and meaning of the foregoing sections of the Iowa Code and Iowa Administrative Code.

DECISION:

The unemployment insurance decision dated February 16, 2004, reference 01, is reversed. Shawn M. Plucar did not refuse to accept an offer of suitable work with Manpower Inc. of Des Moines on or about January 13, 2004 and benefits are allowed, provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

tjc/b