

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

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SALEM MANAGEMENT INC  
RUDY SALEM EMPLOYMENT AGENCY  
PO BOX 3124  
SIOUX CITY IA 51102

Appeal Number: 04A-UI-00990-SWT  
OC 09/21/03 R 01  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 23, 2004, reference 08, that concluded the claimant was not subject to disqualification for failing to accept work offered by the employer. A telephone hearing was held on February 18, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Cyd Fleckenstein participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for Advance Services Inc. and was paid \$9.00 an hour for about 72 hours of work per week. After his employment ended in September 2003, the claimant filed a new claim for unemployment insurance benefits with an effective date of September 21, 2003. His average weekly wage during the highest quarter of wages was \$543.03.

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from November 6 to December 17, 2003, on an assignment at All-Power and completed the assignment. The job paid \$7.50 an hour for 40 hours of work. The claimant reopened his claim for unemployment insurance benefits effective December 14, 2003.

On January 2, 2004, the employer offered the claimant an assignment at State Steel. The job was of indefinite duration and could have led to a permanent job. The job paid \$7.50 per hour for 40 hours of work plus two to six overtime hours per week. The job involved the same type of work as what he was doing at All-Power. The pay and working conditions were not unfavorable when compared with similar work in the area. The claimant declined the assignment because he did not believe the pay was enough.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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 offer of work in this case was made during the first five weeks of unemployment following the filing of his additional claim for benefits. Therefore, the claimant is not subject to disqualification because the wage offered for the job was not equal to 100 percent of \$543.03, his average weekly wage in his highest quarter of wages in his base period.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on the separation from employment on December 17, 2003.

**DECISION:**

The unemployment insurance decision dated January 23, 2004, reference 08, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/b