

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL VALDEZ**

Claimant

**APPEAL NO. 12A-UI-09514-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRAMER & ASSOCIATES INC**

Employer

**OC: 12/18/11**

**Claimant: Appellant (4)**

Section 96.5(3) – Refusal of Work  
Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant, Daniel Valdez, filed an appeal from a decision dated August 3, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 29, 2012. The claimant participated on his own behalf and Ike Rocha acted as interpreter. The employer, Cramer & Associates, Inc. (Cramer), participated by Controller Steve Tuttle.

**ISSUE:**

The issue is whether the claimant refused a recall to work and whether he is able and available for work.

**FINDINGS OF FACT:**

Daniel Valdez was employed by Cramer from August 1, 2005 until November 17, 2011 as a full-time seasonable laborer. He was laid off November 17, 2011, due to lack of work. On July 13, 2012, Controller Steve Tuttle contacted the claimant by phone and asked him to return to work Monday, July 16, 2012. Mr. Valdez said he did not know for sure and Mr. Tuttle asked him to let the company know before Monday, and gave his personal cell phone number to Mr. Valdez so he could call directly. The claimant never responded to the offer of work.

At the appeal hearing, the claimant maintained he could not work due to having a kidney stone for which he is still being treated. He did not provide any explanation for not telling Mr. Tuttle about the problem or even responding to the offer of work one way or the other.

Mr. Valdez has not yet been released to return to work but has another doctor's appointment September 5, 2012.

## REASONING AND 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.

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or

health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

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".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant did not accept the offer of work because he was not medically able and available to work. The provisions of the above Administrative Code section the issue of availability must be determined before a disqualification for refusal of work may be imposed. The claimant is not disqualified for the work refusal, but he is ineligible for benefits because he is not able and available for work due to medical problems.

#### **DECISION:**

The representative's decision of August 3, 2012, reference 01, is modified in favor of the appellant. Daniel Valdez is not disqualified as a result of his refusal of work. However, he is ineligible for benefits because he is under the care of a physician for a non-work-related medical condition.

If the claimant is released to return to work with a written statement from his doctor, such proof should be provided to a representative at his local Workforce Center.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw