

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE N MOLINA, JR
Claimant

APPEAL NO. 10A-UI-05206-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER INTERNATIONAL INC
Employer

**Original Claim: 08/23/09
Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit
Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 25, 2010, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 26, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Tammi Ames participated in the hearing on behalf of the employer with a witness, Jennifer Jensen. The parties agreed that a decision could be made on the issue of whether the claimant failed to accept suitable work without good cause.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant discharged for work-connected misconduct?

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment as a maintenance employee with Harsco company from December 7, 2009, to January 15, 2010. His rate of pay for the job was \$16.82 per hour.

Personnel at Harsco informed the employer that they were dissatisfied with the claimant's work performance and did not believe he was catching on to the work soon enough. A manager at Harsco informed the claimant that he was being released from the assignment. The claimant immediately contacted a staffing specialist with the employer to inform them that he had been released from his assignment at Harco. He sought a new assignment, but nothing was available at the time.

On March 3, 2010, the employer contacted the claimant by phone about a job offer working full-time at Wal-Mart in Muscatine as a general laborer at a rate of pay of \$9.00. He declined the job because the pay was too low and he was in Wisconsin at the time.

The claimant filed a new claim for unemployment insurance benefits with an effective date of August 23, 2009. His average weekly wage based on his highest quarter of wages in his base period was \$894.28. The claimant reopened his claim effective February 7, 2010, after his employment with the employer ended.

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:

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant is not disqualified based on Iowa Code § 96.5-1-j, because asked for additional work immediate after his assignment ended. He is not discharged for work-connected misconduct as defined by 871 IAC 24.32(1), since he was removed from the assignment due to unsatisfactory work.

The next 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 § 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....

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.

Finally, the claimant is not disqualified for declining the job at Wal-Mart, as the work offered would not be considered suitable because the wages did not meet the requirements of Iowa Code § 96.5-3-a. The work was offered about four weeks after he filed his additional claim for benefits, so suitable wages would be \$894.28 per week for the claimant.

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 this separation from employment.

DECISION:

The unemployment insurance decision dated March 25, 2010, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw