

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT L SIDLES

Claimant

APPEAL NO. 13A-UI-10338-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT CONNECTIONS INC

Employer

OC: 06/23/13

Claimant: Appellant (2)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Scott Sidles filed a timely appeal from the August 30, 2013, reference 03, decision that denied benefits in August, 2013 based on a conclusion that he had refused suitable work with Employment Connections, Inc., on August 15, 2013. After due notice was issued, a hearing was held on October 4, 2013. Claimant Scott Sidles participated. Deb Lenz represented the employer. Exhibits A, B and C and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether Mr. Sidles refused an offer of suitable employment in August 2013 without justification.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, Employment Connections, Inc., is a temporary employment agency. Scott Sidles had started a long-term, temporary, full-time assignment at AGCO in July 2012 and was laid off from the assignment on or about July 18, 2013. The hours of AGCO assignment were 2:15 p.m. to 10:15 p.m. At the time of layoff, the pay in the AGCO assignment was \$19.94 per hour. Mr. Sidles had earlier performed work for the employer in a long-term assignment at Pure Fishing, Inc., that had started in 2007 and that had ended July 12, 2012. Before that, Mr. Sidles had performed work for the employer in a full-time, temporary assignment at Rosenboom Machine and Tool during the period of September 2006 through February 2007.

After the July 18, 2013 layoff from AGCO, Mr. Sidles had kept in regular, almost daily contact with the employer about a new assignment.

On August 7, 2013, Deb Lenz of Employment Connections offered Mr. Sidles a full-time, temporary assignment running floor cleaning equipment at Wal-Mart. Ms. Lenz told Mr. Sidles that the position would pay \$11.00 per hour and that the hours would be 10:00 p.m. to 7:00 a.m. The assignment hours would be Sunday night through Friday morning. When Ms. Sidles discussed the proposed assignment with Mr. Sidles, Mr. Sidles said that he would consider it and get back to Ms. Lenz. The proposed assignment was to start on August 18, 2013.

Mr. Sidles continued to be in contact with Employment Connections and with Ms. Lenz on a regular, almost daily basis, but continued to defer providing a response to the offer of an assignment at Wal-Mart. Instead, Mr. Sidles asked Ms. Lenz to inquire with Pure Fishing and Rosenboom Machine and Tool to see whether either company would have a new assignment for him. Ms. Lenz inquired of both companies and neither had an assignment for Mr. Sidles.

On August 14, 2013, Ms. Lenz sent a letter to Mr. Sidles by certified mail. The letter stated as follows:

I have not been able to reach you by phone! I wanted to remind you that we have a position at Wal-Mart per our earlier conversations. This position will start on Sunday, August 18, 2013 at 10:00 p.m. They have even increased the wage for the overnight shift, 10pm – 7am to \$14/hr. If I do not hear from you by Monday, August 19, 2013 I will take it that you are declining this offer for employment

I look forward to hearing from you!

Mr. Sidles received the letter on August 15, 2013. On Friday, August 16, 2013, Mr. Sidles telephoned Ms. Lenz and told her that he was on his way to Blair, Nebraska to check out a welding place. Mr. Sidles told Ms. Lenz that he would be back on Tuesday, August 20, 2013, and would speak to Ms. Lenz on Wednesday, August 21, 2013.

When Mr. Sidles returned from Nebraska, he saw that he had correspondence from Iowa Workforce Development dealing with the issue of whether he had refused suitable work. On Tuesday, August 20, 2013, Mr. Sidles went to Employment Connection and spoke with Ms. Lenz to remind her that he had said he would speak with her on Wednesday, August 21, 2013. Ms. Lenz replied that she had a business to run.

Mr. Sidles had established an original claim for unemployment insurance benefits that was effective June 23, 2013. Mr. Sidles had received benefits for the two week period ending July 6, 2013. Mr. Sidles had filed an additional claim for benefits that was effective July 21, 2013. Mr. Sidles' base period for purposes of the claim year that started June 23, 2013, consisted of the four quarters of 2012. Mr. Sidles' average weekly wage during the highest earning quarter of his base period was \$637.97. Seventy-five percent of that amount was \$478.48. The week that ended August 10, 2013 was the third week of the additional claim for benefits. The week that ended August 17, 2013 was the fourth week of the additional claim for benefits. Assuming a 40-hour work week for the proposed Wal-Mart assignment, the \$11.00 per hour offer would provide \$440.00 in gross weekly wages and the \$14.00 per hour offer would provide \$560.00 in gross weekly wages.

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(8) provides:

- (8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

The evidence in the record establishes a bona fide offer of employment on August 7, 2013 and another bona fide offer of employment on August 14, 2013. Neither offer was for suitable employment since neither offer came close to the \$637.97 average weekly wage Mr. Sidles had earned during his highest earning base period. The Workforce Development Claims Deputy erroneously asserted in their decision that the offers fell during the sixth through twelfth week of the additional claim for benefits. The offers actually came during the third and fourth week of the additional claim that was effective July 21, 2013. During the relevant period, Mr. Sidles was not obligated to accept employment that paid less than \$637.97 per week. Any refusal to accept the August 7, 2013 offer or the August 14, 2013 offer would not disqualify Mr. Sidles for benefits. Mr. Sidles is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's August 30, 2013, reference 03, is reversed. The employment offered on August 7, 2013 and August 14, 2013 was not suitable employment. Any refusal to accept the August 7, 2013 offer or the August 14, 2013 offer would not disqualify the claimant for benefits. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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