

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCO A SALGADO**

Claimant

**APPEAL NO: 10A-UI-07224-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHENHALL'S STAFFING SERVICES INC**

Employer

**OC: 04/18/10**

**Claimant: Respondent (1)**

Section 96.5-3-a – Work Refusal  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Chenhall's Staffing Services, Inc. (employer) appealed a representative's May 12, 2010 decision (reference 01) that concluded Marco A. Salgado (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Heather Quist appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant had at least one assignment with the employer prior to March 5, but as of March 5 he was not on an active assignment. On May 5 the employer contacted the claimant and offered him an assignment to start on March 8. Ms. Quist, the office manager/account manager, was the person who was speaking to the claimant; she was interrupted in her conversation with the claimant by a visit by the fire marshal. She had not yet given the claimant the start time or address for the business client, and told him she would call him back in a few minutes. When she attempted to do so a few minutes later, she was unable to reach the claimant. When there was a new contact by the claimant on March 15, he stated that she had been unable to reach him because he had lost his phone. By that date, the position initially offered to the claimant had already been filled.

The claimant established an unemployment insurance benefit year effective April 18, 2010. On March 5 he had no existing unemployment insurance claim.

After establishing his claim for benefits effective April 18, he filed one weekly claim for benefits for the week ending April 24. His claim then became inactive until he reopened it and resumed filing weekly claims as of the week ending May 22. The employer provided some information that at least on April 28 the claimant was in custody in jail; there was no further information as to whether that incarceration extended to any other weeks.

### **REASONING AND CONCLUSIONS OF LAW:**

The primary issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

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. 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.

Here, the claimant did not have an open claim at the time an offer of work was made, so any refusal would not be effective to disqualify him from benefits. Benefits are allowed, if the claimant is otherwise eligible.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. This determination and any disqualification is made on a week-to-week basis. 871 IAC 24.22(2)(h), 871 IAC 24.22(3)(d). A person who is incarcerated is typically deemed to not be able and available for work. 871 IAC 24.22(2)(g); 871 IAC 24.23(12). The potential benefit week ending May 1 is the only week where the claimant was shown to have arguably been unable to work due to incarceration. However, as the claimant did not file a weekly claim for benefits for that week, the issue is moot. There has been no showing of a disqualification to the claimant meeting the requirements to be able and available for work for any week in which he has sought benefits. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's May 12, 2010 decision (reference 01) is affirmed. The claimant did not refuse a suitable offer of work during an open unemployment insurance benefit claim year, and therefore there is no disqualification to him for not acting on the March 5 job offer. His lack of availability for the week ending May 1 might have been disqualifying, but as there was no claim that week, the issue is moot. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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