

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VIRGINIA D SANTOS**  
Claimant

**APPEAL NO. 10A-UI-04744-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACTION STAFFING SERVICES INC**  
Employer

**OC: 02/28/10**  
**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available  
Section 96.5-3-A – Refusal to Accept Suitable Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 24, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2010. Claimant participated. Employer participated by Elle Soundara, executive assistant. The record consists of the testimony of Elle Soundara and the testimony of Virginia Santos. Ike Rocha served as Spanish interpreter.

**ISSUE:**

Whether the claimant refused to accept suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant made an application to accept temporary assignments with the employer on May 26, 2009. The claimant speaks Spanish only and did not want assignments where speaking English would be required. The claimant accepted a temporary assignment with Dahleen's Cleaning Service. That assignment started on May 27, 2009, and ended on June 20, 2009. This is the only assignment the claimant has had from the employer.

On January 19, 2010, the employer telephoned the claimant about a possible job. The claimant asked for information about the job in Spanish so that she could determine whether to accept the offer. The employer did not have anyone who spoke Spanish on its staff. The claimant was waiting to get more information from the employer on this job and never heard back from the employer.

## REASONING AND CONCLUSIONS OF LAW:

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".

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.

The evidence in this case established that the claimant, due to her inability to speak English, told the employer at the time she applied for temporary work assignments, that she was only available for jobs where speaking English was not a requirement. The claimant did receive one work assignment and satisfactorily completed that assignment. The employer contends that even though it knew the claimant was only looking for jobs that permitted her to speak Spanish that a bona fide offer of employment was made on January 19, 2010. According to the employer, the claimant refused this offer.

The claimant credibly testified that she did not refuse the job but asked for more information about the job, in Spanish, so that she could consider the offer. The employer admitted that it did not provide information about the job in Spanish. The administrative law judge concludes that the claimant could not have refused a job offer if she could not understand what was being offered to her. There is insufficient evidence that an offer of work was actually made to the claimant on January 19, 2010. Accordingly, benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 24, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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