

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL E CISNEROS-GUZMAN
Claimant

APPEAL NO. 06A-UI-11786-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING
Employer

OC: 10-01-06 R: 02
Claimant: Respondent (1-R)

Section 96.5-3-a – Refusal of Suitable Work

STATEMENT OF THE CASE:

USA Staffing filed a timely appeal from an unemployment insurance decision dated October 30, 2006, reference 01, which allowed benefits to Daniel E. Cisneros-Guzman. After due notice was issued, a telephone hearing was held December 21, 2006, with Mr. Cisneros-Guzman participating. Manager Brandon Rost participated for the employer. Both parties waived additional notice on the issue of refusal of suitable work.

ISSUE:

Did the claimant refuse suitable offers of work on October 4, October 9, and October 17, 2006?

FINDINGS OF FACT:

Having heard the testimony of witnesses and having examined all of the evidence in the record, the administrative law judge finds: On October 4, 2006, USA Staffing offered a temp-to-hire position in Grinnell, Iowa, to Daniel E. Cisneros-Guzman. Mr. Cisneros-Guzman lived at the time in Marshalltown but was making plans to move to Nevada. He declined the offer because of the distance. During the base period upon which present unemployment insurance benefits are computed, Mr. Cisneros-Guzman had always worked in the locality in which he resided.

On October 9, 2006, Mr. Cisneros-Guzman declined an offer of work in Marshalltown that would have paid \$8.00 per hour for approximately 24 hours of work per week. The average weekly wage that Mr. Cisneros-Guzman earned during his base period was \$297.07. The offer he declined would have paid approximately \$192.00 per week. The offer came in the second week of Mr. Cisneros-Guzman's unemployment.

In the afternoon of October 17, 2006, Mr. Cisneros-Guzman declined an offer of work in Marshalltown that would have required him to attend orientation on the following morning. Mr. Cisneros-Guzman had lost his driving privileges. He was unsure if he could arrange for transportation in order to attend orientation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant refused one or more suitable offers of employment. The administrative law judge concludes that it does not.

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.

The administrative law judge concludes that the October 4, 2006 offer was unsuitable due to the distance between Mr. Cisneros-Guzman's home and the work site. He had established a pattern of working in the locality in which he lived. The administrative law judge concludes that the October 9, 2006 offer was unsuitable because the wage offered was less than 100 percent of his average weekly wage in the highest quarter of his base period. The administrative law judge concludes that denial of benefits for the refusal of the October 17, 2006 offer would not be

appropriate because Mr. Cisneros-Guzman was not given sufficient time to arrange for transportation.

In testimony, Mr. Cisneros-Guzman indicated that he has now lost his driving privileges. The matter of whether his availability for employment is unduly limited due to this loss and his recent move to a smaller community is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated October 30, 2006, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The issue of whether his availability for work is unduly limited due to his loss of driving privileges is remanded to the Unemployment Insurance Services Division.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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