

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN DEWALL
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL NO. 14A-UI-08025-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/13/14
Claimant: Appellant (4)

Iowa Code § 96.4-3 - Availability for Work
Iowa Code § 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

John DeWall (claimant) appealed an unemployment insurance decision dated August 4, 2014, (reference 01), which held that he was not eligible for unemployment insurance benefits because he refused an offer of suitable work with Aventure Staffing & Professional (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 4, 2014. The claimant participated in the hearing. The employer participated through Deb Miller, Human Resources Specialist and Roxane Minner, Branch Manager. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available, and if so, whether he refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked one assignment for the employer from November 22, 2013, through February 28, 2014. It was a general laborer position at Victor Manufacturing in Victor, Iowa which paid \$14.00 per hour. He worked out of the employer's Grinnell office and was living in Williamsburg at the time. The claimant moved to Cedar Rapids, Iowa to live with a friend but failed to notify the employer that he moved.

The claimant filed a claim for benefits effective July 13, 2014, and was advised that his average weekly wage was \$17.18 per hour. He testified that the Workforce representative told him he did not have to accept a wage of less than that amount.

Branch Manager Roxanne Minner called and spoke with the claimant on July 18, 2014. She offered him a general laborer position at Thomberts in Newton, Iowa. The position paid \$12.42 per hour and it was a temp-to-hire position. The claimant refused the job offer because it was too far to drive and he was no longer interested in temporary jobs because he needs benefits.

During the hearing, the claimant testified that the temporary job also did not pay enough. He will not work for less than \$17.18 per hour because he needs enough money to live on, not just to survive. The claimant wants his unemployment so he can get to Des Moines, where he said he could get a full-time job at which he can work 12 months a year. He is unwilling to work at a temporary job and is waiting for the unemployment which he said he, "already should have had." The claimant was adamant that all he wanted was to get his unemployment so he can get to a better location.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant unreasonably refused a suitable offer of work. However, 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. 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. See 871 IAC 24.24(4).

In the case herein, the claimant's refusal of the job offer cannot be addressed because the evidence does not demonstrate he is available for work. Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code § 96.4-3. It is his burden to prove his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant is unduly limiting his availability for work because he is only willing to work in Des Moines and is waiting to go to work for a specific employer. A claimant is disqualified for being unavailable for work when he is only willing to work in a specific area and only willing to go to work for a specific employer, when other work is available. See 871 IAC 24.23(18) and (21). Additionally, the claimant refuses to apply for any temporary jobs and an offer of temporary work is not, as a matter of law, unsuitable. *Norland v. Iowa Department of Job Service*, 412 N.W.2d 904 (Iowa 1987).

When considering the length of unemployment, if an individual places restrictions on the wages and type of work that is acceptable, such individual has no reasonable expectancy of securing work and is deemed not to meet the availability requirements of the law. See 871 IAC 24.23(3). The claimant has been unemployed for almost seven months and while he is correct, he will not be disqualified for refusing work that pays less than his average weekly wage of \$17.18, it does not mean he is automatically awarded unemployment benefits. The claimant's testimony demonstrates that he is not able and available for work as is required under Iowa Code § 96.4-3. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated August 4, 2014, (reference 01), is modified in favor of the appellant. The claimant is not disqualified for refusing an offer of work but is disqualified because he does not meet the availability requirements of the law.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs