

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JOHN L DIXON  
2573 LINN/BENTON RD  
PALO IA 52324**

**KELLY SERVICES INC  
999 W BIG BEAVER ROAD  
TROY MI 48084-4716**

**Appeal Number: 04A-UI-09708-DWT  
OC: 08/01/04 R: 03  
Claimant: Appellant (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

John L. Dixon (claimant) appealed a representative's August 31, 2004 decision (reference 05) that concluded he was not qualified to receive unemployment insurance benefits as of August 23, 2004, because he refused Kelly Services, Inc. (employer) offer of suitable work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 30, 2004. The claimant participated in the hearing. Nancy Voelker, a senior supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work?

Did the claimant refuse an offer of suitable work?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits during the week of August 1, 2004. He previously registered to do work for the employer's clients in February 2003. The claimant indicated interest in doing light industrial work.

Sometime prior to August 20, 2004, the claimant contacted the employer's local office and indicated he would travel to Monticello or 55 miles for a job. Initially, the employer talked to the claimant about jobs in Monticello that paid more than \$6.50 per hour. When the higher paying jobs were not available, on August 20 Voelker offered the claimant a long-term job, a temp to hire job, at a facility in Monticello. The job, a light industrial job, started on August 23 and paid \$6.50 per hour. The claimant accepted this job offer on August 20.

On August 22, the claimant experienced problems with his vehicle. He contacted Voelker on Monday, August 23, and indicated he would have to decline the Monticello job because he no longer had transportation to get there.

The claimant's average weekly wage during the quarter in his base period is \$225.75. The last day the claimant worked was in late July.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant can be disqualified from receiving unemployment insurance benefits if he refused an offer of suitable work without good cause. Iowa Code §96.5-3-a. However, before a disqualification for failing to accept work can be imposed, the claimant must be able to and available for work. Lack of transportation establishes good cause for refusing work, but raises the issue of whether the claimant is able to and available for work. 871 IAC 24.24.(4).

The facts establish on August 23 the claimant declined to start the job he had accepted on August 20 because his vehicle was not running. Even though the job was suitable for the claimant, he had good cause to decline it. Since the claimant did not have transportation to get to a job as of August 23, he is not eligible to receive unemployment insurance benefits as of August 22, 2004. His ineligibility continues until he establishes to the Department that he has the ability to get to work.

The Department disqualified the claimant from receiving benefits for the weeks ending August 14 and 21. Since the claimant did not have transportation problems that affected his ability to get to work until August 22, he is eligible to receive benefits for the weeks ending August 14 and 21.

**DECISION:**

The representative's August 31, 2004 decision (reference 05) is modified in the claimant's favor. The claimant refused an offer of suitable work with good cause on August 23, 2004. Even though the claimant had good cause to decline the employer's job, he was not able or available for work as of August 22, 2004, because he did not have a way to get to work. Even though the Department concluded the claimant was not eligible to receive benefits for the weeks ending August 14 and 21, he did not have transportation problems until August 22, 2004.

Therefore, the claimant is eligible to receive benefits for the weeks ending August 14 and 21, 2004. The claimant is not eligible to receive benefits as of August 22 because he was not able to or available to get to work. The claimant's ineligibility remains until he establishes that he has transportation and is able and available to work any time after August 22, 2004.

dlw/kjf