

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON BIERKAMP
Claimant

APPEAL NO. 07A-UI-03320-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 01/07/07 R: 04
Claimant: Appellant (2)**

Section 96.5(3)(A) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Jason Bierkamp filed a timely appeal from the March 26, 2007, reference 03, decision that denied benefits and that concluded he had refused an offer of suitable work on February 7, 2007. After due notice was issued, a hearing was held on April 16, 2007. Mr. Bierkamp participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the March 1, 2007, reference 02, decision that denied benefits based on an alleged refusal of suitable work on January 31, 2007. The administrative law judge took official notice of the decision entered by Administrative Law Judge Marlon Mormann on March 30, 2007, in Appeal Number 07A-UI-02617-MT, which decision affirmed the reference 02 decision and deemed the claimant's appeal of the reference 02 decision untimely.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment on February 7, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On February 7, 2007 a Temp Associates representative, Kevin, contacted Jason Bierkamp regarding a possible assignment. The representative told Mr. Bierkamp that the assignment would be in Bluegrass, Iowa, would be a landscaping position, and would start sometime in March. Bluegrass, Iowa, is approximately 20-25 minutes from the claimant's residence in Durant. The claimant's prior assignment had been in Durant. The representative did not tell Mr. Bierkamp the hours of the proposed landscaping assignment or the wage the assignment would pay. The representative asked the claimant whether Temp Associates could send his application to the client business. Mr. Bierkamp asked for an opportunity to think about it. Mr. Bierkamp was concerned with the commuting distance and expense, as well as the uncertain start date. There was no other discussion between Temp Associates and Mr. Bierkamp regarding the assignment discussed on February 7, 2007.

On March 1, 2007, a claims representative entered a reference 02 decision that disqualified Mr. Bierkamp for benefits based on a work refusal on January 31, 2007. On March 29, 2007, the claimant and the employer participated in an appeal hearing with Administrative Law Judge

Marlon Moorman concerning Appeal Number 07A-UI-02617-MT. On March 30, Judge Mormann entered a decision that deemed the claimant's appeal of the reference 02 decision untimely and affirmed the reference 02 decision. The claimant has not appealed Judge Mormann's decision and remains subject to the disqualification set forth in the March 1, 2007, reference 02, decision.

REASONING AND CONCLUSIONS OF LAW:

This matter concerns only the work refusal alleged to have occurred on February 7, 2007.

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(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.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The evidence in the record indicates that the temporary employment agency did not make a bonafide offer of employment to Mr. Bierkamp on February 7, 2007. The employer representative did not provide the hours of employment, the hourly wage, or a specific start date. Because there was no bonafide offer of employment, there was no refusal of suitable employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bierkamp did not refuse an offer of suitable employment from Temp Associates on February 7, 2007, and no further disqualification will enter. However, Mr. Bierkamp remains subject to the March 1, 2007, reference 02, disqualification decision concerning a work refusal on January 31, 2007, which decision was affirmed in Appeal Number 07A-UI-02617-MT.

DECISION:

The Agency representative's decision dated March 26, 2007, reference 03, is reversed. The claimant did not refuse a suitable offer of employment on February 7, 2007. However, the claimant remains subject to the March 1, 2007, reference 02, disqualification decision concerning a work refusal on January 31, 2007, which decision was affirmed in Appeal Number 07A-UI-02617-MT.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css