

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY R MASON**

Claimant

**APPEAL NO: 10A-UI-10871-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCED SERVICES INC**

Employer

**OC: 02/14/10**

**Claimant: Respondent (1/R)**

Section 96.5-3-a – Work Refusal

Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Advanced Services, Inc. (employer) appealed a representative's July 27, 2010 decision (reference 04) that concluded Terry R. Mason (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Holly Carter appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant disqualified due to refusing an offer of suitable work without good cause?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant began taking assignments with the employer on April 19, 2010. He had indicated availability for either first or third shifts. Before June 21, he had worked one third shift and two first shift assignments.

On June 21 the employer offered the claimant two positions. The first was a first shift position at \$9.00 per hour. The claimant declined the position as it required Saturday work, and he had family obligations on the weekends. The second was a second shift position at \$8.00 per hour. The claimant declined the position as it was a second shift position and he had a class commitment on Thursday evenings.

The claimant accepted a final assignment on June 23, 2010, working at \$9.00 on a Monday through Friday first shift position. His last day on the assignment was July 28, 2010. The employer provided some information suggesting that the claimant ended the assignment by quitting on July 29, 2010. That separation has not yet been adjudicated.

The claimant had originally established an unemployment insurance benefit year effective February 14, 2010. His average weekly wage for the high quarter of his base period was determined to be \$570.60, and his weekly benefit amount was calculated to be \$322.00. He reopened the claim effective June 20, 2010 by filing an additional claim.

For the benefit weeks ending June 26 through July 31 the claimant filed weekly claims and reported some wages, receiving partial benefits. The amounts reported by the claimant as earned for those weeks were, respectively: \$132.00, \$220.00, \$287.00, \$287.00, \$235.00, and \$198.00. The employer indicates that for those weeks the claimant earned \$247.50, \$330.00, \$222.75, \$330.00, \$330.00, and \$198.00; the employer believes that for the five weeks the amounts reported differ, the claimant may have reported net wages rather than gross wages earned.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant refused a suitable offer of work and if so if it was for good cause.

Iowa Code § 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.

Rule 871 IAC 24.24(15) provides in pertinent part:

*Suitable work.* In determining what constitutes suitable work, the department shall consider, among other relevant factors, the following:

*i.* Whether the work offered meets the percentage criteria established for suitable work which is determined by the number of weeks which have elapsed following the effective date of the most recent new or additional claim for benefits filed by the individual.

The minimum hourly wage necessary for a position to be statutorily "suitable" for the claimant in the first week of his reopened additional claim effective June 20, 2010 was \$14.27 (\$570.60 ÷ 40). Neither of the positions offered to him on June 21 met that criteria. Additionally, as he was otherwise generally able and available for regular Monday through Friday first or third shift work, he had good cause for declining the positions due to his Saturday and Thursday evening commitments.

The employer provided some evidence that the claimant underreported income that should have been reported to reduce his benefits. This is a matter not included on the notice of hearing, and the administrative law judge is without jurisdiction to make a ruling on the issue. This matter is remanded to the Claims Section to determine if the claimant was additional wages that he failed to report.

Further, an issue arose during the hearing as to whether there has been a subsequent potentially disqualifying separation. This issue also was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

**DECISION:**

The representative's July 27, 2010 decision (reference 04) is affirmed. The claimant did not refuse a suitable offer of work without good cause. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the underreported wage issue as well as the subsequent separation issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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