

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

BRANDON L CRANE
302 – 2ND ST
VICTOR IA 52347

TEMP ASSOCIATES – MARSHALLTOWN
307 W MAIN ST
MARSHALLTOWN IA 50158

Appeal Number: 04A-UI-08941-DT
OC: 07/04/04 R: 02
Claimant: Respondent (1)

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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Temp Associates – Marshalltown (employer) appealed a representative's August 10, 2004 decision (reference 02) that concluded Brandon L. Crane (claimant) was qualified to receive unemployment insurance benefits as not having refused suitable work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2004. This appeal was consolidated for hearing with one related appeal, 04A-UI-08942-DT. The claimant participated in the hearing. Deb Upah 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: Did the claimant refuse an offer of suitable work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant has had one long-term assignment through the employer beginning on December 17, 2003. He is still in the assignment, working full time on the third shift as a laborer in the employer's client's automobile parts manufacturing facility. Prior to June 6, the business client informed all employees working at the facility, including the temporary employees, that they each needed to take off four days between June 6 and July 23. The claimant decided to take these days off on July 6, 7, 8, and 9. He also did not work on July 5, believing it to be a holiday, although the employer did not pay holiday pay. He did not contact the employer within three days that he was temporarily not working at the business client as required but took the time off as vacation time. The employer did not learn that the claimant had not been working that week until it subsequently received the notice of claim for unemployment insurance benefits that the claimant had filed for the week he was off work. If the employer had known that the claimant was not working that week, it could have offered him a short-term assignment for some or all of the days he was off work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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(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.

In this case, there was no bona fide offer of work and no definite refusal of work, because the employer was not aware that the claimant was off work. Benefits would be allowed, if the claimant was otherwise eligible; however, the concurrently issued decision in 04A-UI-08942-DT concludes that the claimant was not eligible to receive benefits for the week ending July 10, 2004.

DECISION:

The representative's August 10, 2004 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work during the week ending July 10, 2004. The claimant would be qualified to receive unemployment insurance benefits, if he were otherwise eligible.

ld/tjc