

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R HOFFER

Claimant

APPEAL NO. 10A-UI-13102-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 07/11/10

Claimant: Appellant (4)

Section 96.5(3)a – Refusal of Work

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 14, 2010, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 4, 2010. Claimant participated. Employer participated by Vicky Matthias, senior staffing consultant. The record consists of the testimony of James Hoffer and the testimony of Vicky Matthias.

ISSUES:

Whether the claimant is able and available for work;
Whether the claimant refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. The claimant took an assignment from the employer on April 14, 2009 through May 1, 2009. His next assignment was on July 1, 2010, through July 2, 2010. He was given another assignment on July 12, 2010. The claimant started at 6:00 a.m. He had to leave at 7:30 a.m. He left because he had had an on-the-job injury with another employer. The claimant injured his right shoulder and was restricted from using his right arm. The claimant was under a physician's care.

On July 28, 2010, the employer called the claimant about an assignment unloading trucks. This job was the same job at which the claimant had injured his right shoulder. He had been working for another temporary employer when he received the injury although it was the same exact assignment. The claimant refused the job because he had been injured and could not use his right arm. The job was unloading trucks and the claimant could not do that work with his injury.

The claimant was released to return to work on or about July 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). 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 and not unemployed for failing to bump a fellow employee with less seniority. 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. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Under the provisions of the above Administrative Code section, it must first be determined whether the claimant was able and available for work before a disqualification may be imposed for a refusal of work. In the present case the claimant cannot be considered to be able and available for work on July 28, 2010. The claimant had injured his right shoulder and was restricted from using his right arm while working. The job that the claimant was offered required him to unload trucks. It was the same job where he had injured his shoulder, although he received the assignment through another temporary employer.

The claimant cannot be disqualified for refusal of work. He was not able and available for work on July 28, 2010. The claimant is deemed able and available on July 30, 2010, when the physician's restriction was lifted.

DECISION:

The decision of the representative dated September 14, 2010, reference 04, is modified in favor of the appellant. The claimant was not able and available for work on July 28, 2010. He is able and available for work on July 30, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs