

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE A COGDILL
Claimant

APPEAL NO. 12A-UI-11104-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

OC: 07/29/12
Claimant: Appellant (5)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Jose Cogdill filed a timely appeal from the September 10, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on October 9, 2012. Mr. Cogdill participated. Chad Baker represented the employer and presented testimony through Julie White.

ISSUE:

Whether Mr. Cogdill refused a suitable offer of employment without good cause on August 15, 2012.

Whether Mr. Cogdill was available for work within the meaning of the unemployment insurance law on August 15, 2012 and thereafter.

The administrative law judge concludes that Mr. Cogdill refused a suitable offer of employment on August 15, 2012 with good cause because he lacked transportation to the workplace. The administrative law judge also concludes that Mr. Cogdill did not meet the definition of being available for work from August 15, 2012 onward because he lacked transportation outside Muscatine and had previously performed work for the employer outside Muscatine.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. José Cogdill completed a temporary employment work assignment on July 31, 2012. The assignment was in Muscatine. Mr. Cogdill had previously performed work for the employer in an assignment in Wilton, some 13 miles from Muscatine. On July 31, 2012, Mr. Cogdill was in contact with the temporary employment agency to seek additional work, but the agency did not have work for him at that time.

On August 15, 2012, the temporary employment agency contacted Mr. Cogdill to offer him an assignment in Walcott. The assignment was to start the next day. The employer told Mr. Cogdill

that the work hours would be 7:00 a.m. to 3:30 p.m. Monday through Friday and that the wage would be \$11.00 per hour. During Mr. Cogdill's highest earning base period quarter, the first quarter of 2012, Mr. Cogdill's average weekly wage had been \$372.95. The full-time, temporary assignment in Walcott would have matched or exceeded that amount. Mr. Cogdill refused the work assignment. Mr. Cogdill told the employer that the registration tags on his car had expired. For that reason, he could not drive and could not work outside Muscatine. Mr. Cogdill's license registration had expired in July and he lacked the requisite \$150.00 to renew the registration.

Mr. Cogdill next made contact with the employer on September 6, but was again looking for work only in town. Mr. Cogdill continued to search for work in Muscatine, but limited his work search to Muscatine until mid-September.

On September 23, Mr. Cogdill accepted work in a new full-time assignment at Rock Tenn in Iowa City. Mr. Cogdill started the assignment the next day. Mr. Cogdill was able to accept the Iowa City work because he found a friend with whom he could ride to and from work. Mr. Cogdill continued in the Rock Tenn assignment at the time of the hearing on October 9, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant who fails to accept an offer of suitable employment without good cause is disqualified for benefits until the claimant earns 10 times his weekly benefit amount from insured work. See Iowa Code section 96.5(3)(a).

Iowa Administrative Code section 871 IAC 24.24(4) states as follows:

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 If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept 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.

Iowa administrative code section 871 IAC 24.23(4) provides as follows:

If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment.

The weight of the evidence in the record establishes that Mr. Cogdill had good cause for refusing the offer of work on August 15, 2012. The offered work was outside the Muscatine area. Mr. Cogdill lacked transportation outside the Muscatine area because his vehicle registration had expired and he could not legally operate his motor vehicle. The evidence further indicates that Mr. Cogdill did not meet the definition of being available for work from August 15, 2012 because his availability for work was restricted to Muscatine. Mr. Cogdill had previously performed work for the employer outside of Muscatine and, for that reason, Mr. Cogdill's restriction of his availability to only Muscatine was an undue restriction that prevented him from meeting the definition of being available for work. The evidence indicates that as soon as

Mr. Cogdill expanded his work search, he readily obtained new employment in Iowa City. Once he was in the new employment, he was working sufficient hours to remove him from the labor market and, for that reason, could not be deemed available for work or work referrals for unemployment insurance purposes.

DECISION:

The Agency representative's September 10, 2012, reference 03, decision is modified as follows. The claimant refused a suitable offer of employment with good cause on August 15, 2012. The work refusal would not disqualify the claimant for unemployment insurance benefits. However, on August 15, 2012 and until September 23, 2012, the claimant unduly restricted his availability and, for that reason, was not eligible for benefits. On September 23, 2012, the claimant accepted new full-time employment, which removed him from the labor market and made him unavailable for additional work or work referrals. Benefits are denied effective August 15, 2012. The denial of benefits continued as of the October 9, 2012 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs