

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KERRY MEDINA

Claimant

APPEAL NO: 14A-UI-00126-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 10/20/13

Claimant: Appellant (1)

Iowa Code § 96.4-3 - Availability for Work

Iowa Code § 96.5-3-a - Refusal of Suitable Work

STATEMENT OF THE CASE:

Kerry Medina (claimant) appealed an unemployment insurance decision dated December 30, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he refused an offer of suitable work with Advance Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Michael Payne, Risk Management. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available, and if so, whether he refused a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed at an assignment with Palmer Candy earning \$9.80 per hour. His assignment went from November 12, 2013, through November 26, 2013. The claimant checked back in for additional work and the employer offered him an assignment with Sioux City Brick and Tile on December 3, 2013. The position was on first shift and paid \$10.50 per hour. Work boots were required and steel toed boots were preferred. The claimant refused the assignment due to not having steel or leather boots.

A second job offer was made to the claimant on December 11, 2013, for a new assignment at Palmer Candy. It was a second shift position and he previously worked third shift but the pay was the same. The claimant said he would think about the job and return the call to the employer but never did. The employer made a third job offer to the claimant on December 13, 2013 for an assignment at Dean Foods in Sioux City. It was a second shift position which paid \$10.12 per hour. The claimant refused the job offer and there was no explanation.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

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 24.22(1), (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant failed to participate in the hearing and there is no evidence to indicate that he is not able and available to work. Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

A claimant is not qualified for unemployment compensation benefits if he refused a suitable offer of work without good cause. To be suitable, an offer of work must pay wages that are 100 percent of the claimant's average weekly wages in his highest quarter when work is offered during the first five weeks of unemployment. See Iowa Code §96.5-3-a. Additionally, both the job offer and the job refusal must occur within the claimant's benefit year before disqualification can be imposed. 871 IAC 24.24(8).

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.

Inasmuch as the claimant was offered employment with wages which exceeded 100 percent of his average weekly wage paid during the highest quarter of his base period, the administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, he is disqualified and benefits are denied.

DECISION:

The unemployment insurance decision dated December 30, 2013, reference 01, is affirmed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs