

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL A MUNIZ

Claimant

APPEAL NO: 14A-UI-04132-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

OC: 03/23/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 15, 2014, reference 01, that held he refused a suitable offer work from the employer on March 24, 2014, and benefits are denied. A telephone hearing was held on May 8, 2014. The claimant, and Interpreter Ike Rocha, participated. Nate Castillo, HR Personnel Supervisor, participated for the employer.

ISSUES:

Whether claimant refused an offer of suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began work for the employer on March 21, 2013 on assignment at Oral B in Iowa City. He was told this assignment was limited to working 1,000 hours. He completed his work assignment at the work-hour limitation on March 24, 2014. He used public transportation to get to and from work.

The employer telephoned claimant with a job offer at Coles Quality Foods in North Liberty, Iowa. Claimant declined because he did not have a car (or driver's license) to drive from his Iowa City residence to the job. The employer offered claimant a job at Williamsburg Manufacturing that is about 20 miles from Iowa City and claimant declined due to a lack of transportation.

Claimant believes he told the employer he had a female friend who worked at Frontier Foods in North Liberty, and he asked if there was work available at that location for him. The employer checked and there was no job available. Claimant denies employer offered him a job at Buy-Rite in Iowa City. Claimant's average weekly wage for his base employment period is \$339.40. He had been earning \$10.25 an hour at Oral B.

CONCLUSIONS OF LAW:

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.

The administrative law judge concludes claimant did not refuse suitable work with the employer for job offers on March 24, 2014 and benefits are allowed. The employer made no written offer of work to claimant, and when there is a discrepancy between the parties, it is resolved adversely to the employer.

It is undisputed claimant worked an assignment for the employer relying on public transportation for one year. He successfully completed the assignment. In the short run, the employer was unable to overcome claimant's lack of transportation to out-of-town locations when offering

work. The employer could not overcome claimant's dispute about the Buy-Rite job offer as it was not offered in writing.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant is able and available for work in Iowa City, and no availability disqualification is imposed at this time. Claimant is warned that the longer he remains unemployed, he must overcome the transportation issue, and make himself available for work in the surrounding community(s) or face disqualification.

DECISION:

The department decision dated April 15, 2014, reference 01, is reversed. The claimant is not disqualified March 24, 2013 for refusing suitable work, and no availability disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css