

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN D HARMS

Claimant

APPEAL NO. 10A-UI-14936-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC

Employer

OC: 10/11/09

Claimant: Appellant (1)

Section 96.5-3-a – Refusal to Accept Suitable Work

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Kevin Harms (claimant) appealed a representative's October 29, 2010 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with Panama Transfer (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 6, 2010. The claimant participated personally. The employer participated by Heath Richards, Safety Director.

ISSUE:

The issue is whether the claimant refused suitable work and whether he was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The employer offered the claimant work on August 24, 2010, paying \$470.00 per week. The claimant later accepted work and on August 30, 2010, the claimant reported for his physical and other pre-employment testing. The employer told the claimant to report to work on September 1, 2010. The claimant did not report. He told the employer that the hours were not going to work for him. The claimant's vehicle was not functional.

The claimant was hospitalized from September 1 through 4, 2010. On September 10, 2010, the claimant's vehicle was fixed and he was able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did accept an offer of suitable 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.

The claimant was offered work and accepted work but did not appear for work after the physical and training. The claimant did not refuse suitable work.

The claimant was not able and available for work.

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) 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. (See subrule 24.24(7)).

The claimant lost his means of transportation from September 1 through 9, 2010, because his car was not in good working order. When a claimant has no means of transportation to employment, the claimant is deemed to not be available for work. The claimant is disqualified from receiving unemployment insurance benefits, because he is not available for work with the employer.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was in the hospital from September 1 to 4, 2010. He is considered to be unavailable for work from September 1 to 4, 2010.

The claimant is disqualified from receiving unemployment insurance benefits From September 1 through 9, 2010, due to his unavailability for work.

DECISION:

The representative's October 29, 2010 decision (reference 04) is affirmed. The claimant did not refuse suitable work. The claimant is disqualified from receiving unemployment insurance benefits From September 1 through 9, 2010, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw