

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L HOLSTE

Claimant

APPEAL NO: 06A-UI-10799-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**OC: 09/24/06 R: 03
Claimant: Respondent (4)**

Section 96.5-3-a – Work Refusal

Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's October 26, 2006 decision (reference 02) that concluded Larry L. Holste (claimant) was qualified to receive unemployment insurance benefits in conjunction with a potential refusal of an offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 27, 2006. The claimant participated in the hearing. Tracey Davis appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work without good cause? Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on June 19, 2006. His initial assignment was in his home town of Greenfield, Iowa working full time on the second shift at the rate of \$11.15 per hour. His last day in that assignment was September 21, 2006. He established an unemployment insurance benefit year effective September 24, 2006. His weekly benefit amount was calculated to be \$348.00, based on a high base period quarter average weekly wage of \$563.51, equating to an average hourly wage of \$14.09 per hour.

On October 2, Ms. Davis, the office manager of the employer's Creston, Iowa office from which the claimant was seeking assignments, spoke to the claimant and offered him an assignment on the second shift at a business client located in Creston, approximately 25 miles away from the claimant's home. The assignment would have begun on October 4, been full time on the second shift, and paid at the rate of \$11.60 per hour.

The claimant had encouraged a friend to apply for work through the employer, and that friend had done so, and had worked for a period of time at the same assignment in Greenfield at which the claimant had worked. However, the friend was laid off from that assignment sooner than the claimant, and the claimant was feeling somewhat responsible for that friend not being currently employed. Therefore, when Ms. Davis called the claimant on October 2, he indicated he would only take the Creston assignment if there was also a position for the friend. At that time, there was not an additional position available with the Creston business client, so the claimant did not accept the assignment. On or about October 5 a second position became available, so Ms. Davis reoffered the position on the same terms to the claimant and his friend; they both began working on the assignment October 10, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant can be disqualified from future unemployment insurance benefits if he refused a suitable offer of work without good cause.

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.

While the claimant had personal loyalty toward his friend, normally declining work for that reason would not be a good cause for purposes of retaining unemployment insurance benefit eligibility. However, in order for a refusal of an offer of work to be disqualifying, the offer must first be found to be "suitable," which at a minimum means that the rate of pay must fall within the statutorily established percentage guidelines. While the claimant can choose to accept work that falls below those guidelines, and it may in fact be prudent for the claimant to do so, a refusal of an offer below those guidelines will not disqualify him. Here, as the offer was made within the first five weeks of the claimant most recently becoming unemployed, in order for refusal of an offer to be disqualifying, the offer would have had to have been for work at an hourly rate of at least \$14.09 per hour. As the employer's October 2 offer of work was below that amount, his refusal of the assignment on that day does not disqualify him.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2005 and ended March 31, 2006. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's October 26, 2006 decision (reference 02) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs