

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM J SIMON
Claimant

APPEAL NO. 11O-UI-06774-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC/SEDONA STAFFING
Employer

OC: 11/07/10

Claimant: Respondent (5)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's February 14, 2011 decision (reference 02) that concluded Tim J. Simon (claimant) was qualified to receive unemployment insurance benefits after a 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 June 21, 2011. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Carrie Cannon. 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?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant originally began taking assignments through the employer's Dubuque, Iowa, office in February 2003. He was inactive from 2004 until 2007, and re-registered with the employer August 29, 2007. At that time, he had indicated availability for both first and second shifts.

The claimant worked no assignments with the employer from July 1, 2009 until March 2, 2010. He then worked a first-shift assignment through August 31, 2010. His next assignment was from September 23 through November 5, 2010, also working on the first shift. His final assignment began on December 9, and ended December 23, 2010, working on a second shift.

On December 29 Ms. Cannon, the employer's team lead, contacted the claimant and offered him a full-time assignment with another Dubuque area business client to begin "as soon as possible." The position paid the rate of \$8.34 per hour, for a minimum of \$336.60 per week

(40 hours x \$8.34), although overtime at time and a half was not unusual. This shift was also a second-shift position. The claimant refused the offer. His reason for refusing the offer was that he had found that working the second shift caused too much conflict in arranging childcare for his six-year-old daughter. He had encountered the difficulties when working the December assignment, but because he knew as of about his first day on the assignment that it would only last about three weeks, he had worked through the difficulties by seeking favors from family members and friends. However, when the new second-shift position was offered to him on December 29, the claimant informed the employer that second-shift positions were no longer workable for him.

The claimant established an unemployment insurance benefit year effective November 7, 2010. He reopened the claim by filing an additional claim effective December 26, 2010. His average weekly wage based upon his base period wages was \$409.13. The claimant's wage credits during his base period (July 1, 2009 through June 30, 2010) were from the above-noted assignments with the employer, plus employment with another full-time employer from on or about December 1, 2009 through on or about March 1, 2010; that employment with the other employer had also been in a first-shift position. The claimant subsequently secured full-time permanent employment with an employer on the first shift, which he began on or about March 21, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant refused an offer of suitable work without good cause. 871 IAC 24.24(3).

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.

As the position was offered within the first five weeks of the claimant's most recent additional claim and did not clearly meet the 100 percent of the claimant's average weekly wage criteria, the offer was not per se "suitable." 871 IAC 24.24(15)i.

Further, 871 IAC 24.24(3) additionally provides in pertinent part:

. . . Each case shall be determined on its own merits as established by the facts. A reason constituting good cause for refusal of suitable work may nevertheless disqualify such claimant as being not available for work.

The claimant's childcare responsibilities did provide good cause for his refusal of the offer. However, it does then raise the question as to whether the claimant was "able and available" for work.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4–3. The claimant must remain available for work on the same basis as when he was working during his base period. 871 IAC 22(2)(a) provides:

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

Even though the claimant briefly worked a second-shift assignment, it was not within his base period; his base period wages were all earned in first-shift employment. He has demonstrated that there was a reasonable expectation that even if he restricted his availability to first-shift positions that he would be able to, and in fact did, secure employment within that shift restriction.

DECISION:

The representative's February 14, 2011 decision (reference 02) is modified with no effect on the parties. The claimant did not refuse a suitable offer of work without good cause. He remained able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw