

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BOBBY D GOREHAM
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MUSCATINE IA 52761

L A LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 06A-UI-02691-SWT
OC: 01/01/06 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a - Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 28, 2006, reference 03, that concluded the claimant was not subject to disqualification for failing to accept an offer of suitable work. A telephone hearing was held on March 27, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Rhonda Stout.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from September 2005 to December 23, 2005. His last assignment was working for Plastic Products Company at a rate of pay of \$8.00 per hour. The job was located in West Bend, Iowa, about 25 miles from the claimant's home in Muscatine.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 1, 2006. His average weekly wage based on his highest quarter of earnings in his base period was \$456.05, or \$11.40 per hour.

On February 6, 2006, the claimant was offered two jobs. The first job was as a general laborer at an excavating company called Kleppes. The job offered 40 hours of work per week at a rate of pay of \$9.00 per hour and was an assignment that could lead to permanent employment. The work was performed in Muscatine, but the office for Kleppes is in Wilton about 8 to 10 miles from Muscatine. He also was offered a job as a general laborer for JM Manufacturing in Wilton. The job offered at least 40 hours of work at a rate of pay of \$9.00 per hour of work. The rate of pay for both jobs was comparable to the going rate of pay for similar work in the area. The claimant was qualified to perform the work for both jobs.

The claimant declined the job because he does not have a driver's license or a reliable means of transportation. He was informed by the employer that there were people who carpool to work, but the claimant stated he would not rely on anyone other than himself to get to work.

The claimant was also offered a job at Plastic Products on February 13 in West Bend. The job offered 40 hours per week of work for \$8.00 per hour, which was comparable to the going rate of pay for similar work in the local area. The claimant declined the job due to transportation problems.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's evidence that the claimant refused several offers of work is more credible than the claimant's testimony that he was not offered any jobs. The work offered the claimant on February 6, 2006, was during the sixth week following his claim for unemployment insurance benefits. The work was suitable since the rate of pay offered was over seventy-five of his average weekly wage (\$342.04 per week or \$8.55 per hour) and was in line with the going rate of pay for the job. The claimant was qualified to perform the work. The claimant's reason for refusing the work does not mean the standard of good cause. Lack of transportation can provide good cause for declining a job, but a person who does not personally have a driver's license or reliable transportation cannot reject carpool offers or decline jobs without first trying to find a way to get to work, especially work that is a reasonable commuting distance from his home.

DECISION:

The unemployment insurance decision dated February 28, 2006, reference 03, is reversed. The claimant is disqualified from receiving unemployment insurance benefits effective February 5, 2006, until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/tjc