

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

JOHN L WATKINS  
1407 SOUTHLAWN DR  
DES MOINES IA 50315

KELLY SERVICES INC  
999 W BIG BEAVER RD  
TROY MI 48084-4716

Appeal Number: 05A-UI-12086-SWT  
OC: 02/06/05 R: 02  
Claimant: Respondent (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(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 November 18, 2005, reference 06, that concluded he was not subject to disqualification for failing to accept an offer of work. A telephone hearing was held on December 14, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Molly Hoveland participated in the hearing on behalf of the employer with a witness, Dena Furst.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment at Centro Inc. from July 20, 2005, to September 8, 2005, and completed the assignment. It was a full-time job with a rate of pay of \$10.00 and the hours for the job were from 3:00 p.m. to 11:00 p.m., which minimized daycare

costs because his wife worked a dayshift. The claimant had always worked an evening shift when he worked for the employer and his regular full-time employer, Tone Brothers.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 6, 2005, after his employment with Tone Brothers ended. He filed an additional claim for benefits with an effective date of September 11, 2005. His average weekly wage during the highest quarter of wages in his base period was \$987.82 (\$24.70 per hour), using wages from his employment with Tone Brothers.

The employer offered the claimant a dayshift job working for Meridian Mutual Insurance at a rate of pay of \$9.50 per hour. The claimant declined the job because of the rate of pay and the hours.

#### 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 rules state that the criteria above are applied based on the number of weeks that have elapsed following the effective date of the most recent new or additional claim filed by the claimant. 871 IAC 24.24(15)i. Consequentially, the claimant was not offered suitable work under the unemployment insurance law. In addition, the claimant is not required a different shift than his normal shift until it is determined that suitable work does not exist during the claimant's normal work shift.

**DECISION:**

The unemployment insurance decision dated November 18, 2005, reference 06, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjw