

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID T EARLE

Claimant

APPEAL NO: 14A-UI-06724-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES-BURLINGTON INC TE

Employer

OC: 06/01/14

Claimant: Respondent (4/R)

Section 96.5(3)a – Work Refusal
Section 96.4-3 – Able and Available for Work
Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 24, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call at 9:00 a.m., before Administrative Law Judge Julie Elder, on July 22, 2014 with the employer's witness participating. The claimant called after the record was closed and stated he had just received the hearing notice in the mail that arrived at 1:00 p.m. Consequently, the administrative law judge reopened the record and the hearing was held July 23, 2014. The claimant participated in the hearing. Jane Brown, Lead Client Relations Manager, participated in the hearing on behalf of the employer.

During the hearing, issues regarding a potential work refusal issue and whether the claimant is able and available came up. The parties waived notice of whether the claimant refused a suitable offer of work from the employer and whether he is able and available for work. Consequently, those issues will be adjudicated in this decision.

ISSUES:

The issues are whether the claimant voluntarily quit his job, refused a suitable offer of work, and whether he is able and available for work.

FINDINGS OF FACT:

The claimant completed an assignment with the employer March 14, 2014 and properly checked in with the employer March 17, 2014, which was within three days as required by the employer's policy, to notify it he was available to accept another assignment. He reopened his claim for unemployment insurance benefits March 16, 2014. On March 20, 2014 the claimant contacted the employer and notified it he was moving to Washington to accept another position with Tri-Seafood, thus voluntarily quitting his job with this employer. He worked at Tri-Seafood from April 1 to April 26, 2014. He returned to Iowa on May 10, 2014 and lost his driver's license for a DUI on May 12, 2014. The claimant started a new claim year and his claim was effective

June 1, 2014. The employer became aware the claimant was back in Iowa when it received his Notice of Claim from the Department. On May 17, 2014 the employer called the claimant and activated his file. On June 11, 2014 the employer called the claimant and spoke to him personally to make an offer of work at Rail One. The offer contained the following terms: work as a general laborer earning \$10.00 per hour full-time, on a first shift one week/second shift the next week rotation. The claimant refused that offer because he no longer had transportation to a job site.

The claimant's average weekly wage was \$411.64 when he opened his new claim effective June 1, 2014. The offer was made in the second week of unemployment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with the employer to accept other work, did not refuse a suitable offer of work but is not able and available for work.

Iowa Code § 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant voluntarily left his employment with Temp-Associates Burlington to accept a new position in Washington and performed services for the new employer. Consequently, that separation is not disqualifying. The employer did offer the claimant a new assignment and the new assignment would have paid the claimant \$10.00 per hour. The offer was unsuitable, however, as it did not meet the minimum wage requirements set out above for an offer to be considered suitable. The offer was not suitable as it did not meet or exceed 100 percent of the claimant's weekly wage of \$411.64. Finally, the claimant lost his driver's license and does not have transportation to work another assignment for the employer or for anyone else. Therefore, he is not able and available for work as that term is defined by Iowa law. Because the claimant is not able and available for work, effective May 12, 2014, he has been overpaid unemployment insurance benefits. The issue of the overpayment is remanded to the Claims Section for an initial determination and adjudication.

DECISION:

The June 24, 2014, reference 01, decision is modified in favor of the employer/appellant. The claimant's voluntary leaving to accept other employment was not a disqualifying event; he did not refuse a suitable offer of work but is not able and available for work because he does not have transportation. Benefits are withheld until such time as the claimant is again able and available for work. As a result of the fact the claimant is not able and available for work; he is overpaid benefits beginning the week ending May 17, 2014. The issue of the amount of the claimant's overpayment is remanded to the Claims Section.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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