

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN STEVENS
Claimant

APPEAL NO. 11A-UI-04240-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-1 POOLS LLC
Employer

OC: 11/29/09
Claimant: Appellant (3-R)

Section 96.4-3 – Able and Available for Work
Section 96.5-3-a – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 23, 2011, reference 02, which denied unemployment insurance benefits, finding that the claimant refused recall to suitable work with A-1 Pools LLC. After due notice was issued, a telephone hearing was held on April 26, 2011. The claimant participated personally. The employer participated by David Sheridan and Marcy Giles. Exhibit One and Exhibit A were received into evidence.

ISSUE:

At issue is whether the claimant is able and available for work and whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Dustin Stevens was employed with A-1 Pools LLC from the spring of 2009 until November 29, 2009, when he was laid off work. Mr. Stevens was employed as a full-time swimming pool service and construction worker and was paid by the hour. His immediate supervisor was David Sheridan, company owner.

On or about March 18, 2010, A-1 Pools LLC attempted to recall Mr. Stevens to his regular job position at his regular rate of pay. Mr. Stevens declined the recall, as he was not available because he was involved in working on a house unrelated to his employment with A-1 Pools LLC. Mr. Stevens indicated that he would be available to return to work with A-1 Pools LLC in April 2010. The claimant was then unavailable to return to recall to his regular job, indicating in April that he was going out of town. During this time, the claimant was also engaged in starting his own business, a swimming pool service and installation company. Although the employer attempted to call Mr. Stevens back to his regular job on a number of occasions during this period via telephone calls and text messages, Mr. Stevens was not available to accept the recall.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work and whether the claimant had good cause for refusing suitable work. The evidence in the record established that the claimant was not available for work and that good cause for refusing a recall to suitable work has not been shown.

Iowa Code section 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".

871 IAC 24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

- b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The evidence in the record establishes that A-1 Pools LLC began attempting to recall Mr. Stevens back to his regular job at his regular pay and hours on March 18, 2010. The claimant refused the recall because he was not available, as the claimant was engaged in a house repair project. Repeated attempts were then made by the employer to recall Mr. Stevens back to his regular job. However, the claimant continued to be unavailable because he was going out of town and other similar reasons.

The administrative law judge concludes, based upon the evidence in the record, Mr. Stevens refused without good cause an offer of suitable work effective the week beginning March 21, 2010. The claimant was unavailable for work and ineligible for benefits as of that time because he chose to engage in personal endeavors rather than returning to his regular employment with A-1 Pools LLC.

Based upon the evidence in the record, the administrative law judge concludes that the fact-finder's decision relating to the claimant's ineligibility beginning June 6, 2010, was in error, as the claimant's ineligibility for unemployment insurance benefits began effective the week of March 21, 2010.

DECISION:

The representative's decision dated March 23, 2011, reference 02, is affirmed as modified. The portion of the determination finding the claimant refused a recall to suitable work is affirmed. The portion of the determination finding the claimant refused a recall to suitable work on June 6, 2010, is modified to find that the claimant refused work and is ineligible for benefits for the week beginning March 21, 2010. The claimant is disqualified from receiving unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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