

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

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GADBURY TEMPORARY EMPLOYMENT
INC
C /O DONETTE GADBURY
809 CENTRAL AVE STE 430
FORT DODGE IA 50501

Appeal Number: 06A-UI-01504-JTT
OC: 01/01/06 R: 01
Claimant: Respondent (1R)

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)

871 IAC 24.24(8) – Refusal Prior to Claim for Benefits
Section 96.5(3) – Refusal of Offer of Suitable Work

STATEMENT OF THE CASE:

Gadbury Temporary Employment filed a timely appeal from the February 3, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 23, 2005. President Donette Gadbury represented the employer. Claimant Russell Musselman did not participate. The administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Musselman last worked for Gadbury Temporary Employment in an assignment that began

October 31, 2005 and ended on November 17, 2005. The Gadbury Temporary Employment was willing to continue the employment relationship with Mr. Musselman. On November 22, the temporary employment agency contacted Mr. Musselman regarding an assignment in Webster City. Mr. Musselman refused the assignment and stated he did not want to work outside of Fort Dodge. On December 9, 2005, the temporary employment agency contacted Mr. Musselman regarding an assignment in Humboldt. Mr. Musselman refused the assignment without explanation. Thereafter the temporary employment initiated no further contact with Mr. Musselman.

Russell Musselman filed a claim for benefits that was effective January 1, 2006 and has received benefits of \$182.00 for the benefit week that ended January 7, 2006. Mr. Russell did not continue his claim after that week.

On January 6, 2006, Mr. Musselman contacted Gadbury Temporary Employment to advise he was available for placement in an assignment. The temporary employment agency has a telephone number for Mr. Musselman, but has not attempted to contact him regarding a new assignment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the evidence in the record establishes that Mr. Musselman is disqualified for benefits based on a refusal of a suitable offer of employment on December 9, 2005. It does not.

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.

Iowa Code Section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

871 IAC 24.1(21) provides as follows:

Benefit year, individual. The benefit year is a period of 365 days (366 in a leap year) beginning with and including the starting date of the benefit year. The starting date of the benefit year is always on Sunday and is usually the Sunday of the current week in which the claimant first files a valid claim unless the claim is backdated as allowed under subrule 24.2(1), paragraph "h."

The evidence in the record establishes that whatever offer of employment was made on December 9, 2005, was made prior to outside of Mr. Musselman's benefit, which began January 1, 2006. Accordingly, the disqualifying provisions of Iowa Code Section 96.5(3) would not apply. See 871 IAC 24.24(8). The claimant is eligible for benefits, provided he is otherwise eligible.

The claimant's failure to participate and the evidence presented by the employer raise the issue of whether the claimant is able and available for employment. Insufficient evidence was available to the administrative law judge to decide that issue and it has not yet been addressed at the lower level. This matter will be remanded for a determination of whether the claimant is able and available for employment.

DECISION:

The Agency representative's February 3, 2006, reference 02 decision is affirmed. The claimant did not refuse a suitable offer of employment within the benefit year. The claimant is eligible for benefits, provided he is otherwise eligible.

REMAND:

This matter is remanded for a determination of whether the claimant has been able and available for employment since establishing his claim for benefits.

JT/s