

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

BRANDY S MISCHNICK
1548 – 270TH ST
FONTANELLE IA 50846

ADVANCE SERVICES INC
c/o TALX UCM SERVICES INC
PO BOX 66864
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-05046-JTT
OC: 04/03/05 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, 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) – Refusal to Accept Suitable Work

STATEMENT OF THE CASE:

Advance Services filed a timely appeal from the May 2, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on June 2, 2005. Brandy Mischnick participated. Staffing Coordinator Mindy Shackelford represented the employer. Exhibits One and Two were received into evidence.

FINDINGS OF FACT:

Brandy Mischnick has been employed through Advance Services temporary employment agency as a full-time laborer since August 23, 2004. Ms. Mischnick's most recent assignment has been with Cardinal Glass in Greenfield. On April 1, 2005, Cardinal Glass laid off Ms. Mischnick and 31 other temporary employees. Cardinal Glass expected to recall the temporary employees in two to three weeks.

On April 8, Ms. Shackelford telephoned Ms. Mischnick. Ms. Shakelford indicated that since Ms. Mischnick was off work, it was Ms. Shakelford's job to follow up with Ms. Mischnick. Ms. Shakelford asked Ms. Mischnick whether Ms. Mischnick wanted Ms. Shakelford to look for another assignment for Ms. Mischnick. Ms. Mischnick indicated that she would prefer to return to Cardinal Glass. Ms. Shakelford did not discuss a specific new assignment with Ms. Mischnick. On April 20, Cardinal Glass recalled Ms. Mischnick. Ms. Mischnick returned to the assignment at Cardinal Glass on April 27 and continues in that assignment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Mischnick refused suitable work. It does not.

An individual shall be disqualified for benefits if the evidence establishes that the individual has failed, without good cause, to accept suitable work when offered that individual. See Iowa Code section 96.5(3). The evidence must first establish that a bona fide offer of work was made to the individual by personal contact. See 871 IAC 24(1)(a). The evidence must then establish that the claimant made a definite refusal of the offered employment. See 871 IAC 24(1)(a).

The evidence in the record establishes that Ms. Shakelford did not discuss a specific assignment with Ms. Mischnick during the telephone conversation on April 8, 2004. In reaching this conclusion, the administrative law judge has considered the reliability of the testimony. Ms. Mischnick testified that she had no knowledge of a new assignment and would have been interested in learning of one. Ms. Mischnick had no guarantee that she would be recalled to the Cardinal Glass assignment and, therefore, had an incentive to consider another assignment, if one was offered. Ms. Shakelford testified that she discussed a new assignment in detail with Ms. Mischnick. More than 30 temporary employees were laid off from Cardinal Glass and Ms. Shakelford was apparently responsible for following up with some or all of those laid off employees. The administrative law judge concludes that Ms. Mischnick's testimony is the more reliable. The administrative law judge further concludes that no bona fide offer of employment was made to Ms. Mischnick.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Mischnick did not refuse a suitable offer of employment. Accordingly, Ms. Mischnick is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated May 2, 2005, reference 02, is affirmed. The claimant did not refuse a suitable offer of employment. The claimant is eligible for benefits, provided she is otherwise eligible.

Jt/kjw