

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKI L CARLSON**  
Claimant

**APPEAL NO. 11A-UI-11951-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOLDEN CIRCLE BUS SOLUTIONS INC**  
Employer

**OC:03/06/11  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available  
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 August 30, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 5, 2011. The claimant participated. The employer participated by Erin Zirkelbach, assistant staffing manager. The record consists of the testimony of Vicki Carlson and the testimony of Erin Zirkelbach. Official notice is taken of agency records.

**ISSUES:**

Whether the claimant is able and available for work; and

Whether the claimant refused an offer of suitable work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established a claim for unemployment insurance benefits with an original claim date of March 6, 2011. The claimant had been working for the employer, which is a temporary staffing agency. Her assignment ended on March 4, 2011.

On June 1, 2011, the claimant was offered a temporary assignment as a front desk person with one of the employer's clients. The wage was \$12.00 per hour and was a full-time position. The claimant turned the offer down. The claimant declined the offer because the hourly wage was too low and because this was a temporary assignment. The claimant wanted a permanent position or a position that could lead to a permanent job.

The claimant's average weekly wage during the highest quarter of her base period was \$665.97. This wage was earned during the fourth quarter of 2009.

## REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is able and available for work.

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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant was able and available for work on June 1, 2011.

Another aspect of the able and available issue in this case is whether the claimant unreasonably rejected an offer of suitable work. An individual who refuses recall to suitable work is disqualified from receiving job insurance benefits.

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.

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 § 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 employer offered temporary work to the claimant on two occasions but the claimant refused each time. The offer and refusal occurred during the claimant's current benefit year. She said he would have accepted the work if it was full-time. An offer of temporary work is not, as a matter of law, unsuitable. Suitability of work is a question of fact, and the temporary nature of

the work offered is one fact which may be considered in evaluating the suitability of that work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904 (Iowa 1987).

The claimant in this case was looking for work as an administrative assistant, secretary, or office assistant. The employer was a temporary staffing agency and the claimant had accepted temporary assignments from this employer. She was also working with other temporary staffing agencies and had accepted assignments from those agencies as well. On June 1, 2011, the claimant was offered a full-time temporary assignment as a front desk person with one of the employer's clients. The job duties as a front desk person were those performed by an administrative assistant or office assistant. The claimant turned down the work because it only paid \$12.00 per hour and because it was a temporary assignment.

The claimant was between the thirteenth through the eighteenth week since she established her claim for unemployment benefits on March 6, 2011. The job offered by the employer on June 1, 2011, was for \$12.00 an hour times 40 hours per week, or \$480.00. The claimant's average weekly wage during the highest quarter of her base period was \$665.97. Seventy percent of \$665.97 is \$466.18. The wages were suitable even though the claimant wanted to earn \$13.00 an hour. In addition, the job itself was suitable. The fact that it was only a temporary assignment does not render the job unsuitable. The administrative law judge understands why the claimant preferred a permanent job or a temp to hire, but she had accepted temporary assignments in the past with several different temporary staffing agencies.

The administrative law judge considers the work offered by the employer to be suitable work within the meaning of the law. Since the claimant did refuse a suitable offer of work, she is disqualified and benefits are denied.

**DECISION:**

The unemployment insurance decision dated August 30, 2011, reference 01, is affirmed. The claimant did refuse a suitable offer of work. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/kjw