

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON N MILLER
Claimant

APPEAL NO. 12A-UI-03468-VST

RM ENTERPRISES INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/0/12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 28, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 19, 2012. Claimant participated. The employer participated by Rhonda Coburn, president, and Christy McCrane, human resources. The record consists of the testimony of the testimony of Aaron Miller; the testimony of Rhonda Coburn; the testimony of Christy McCrane; and Employer's Exhibits 1-5.

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 employer is a temporary staffing agency. The claimant first accepted temporary work assignments from the employer on March 20, 2011. His final assignment ended on December 30, 2011. He earned \$10.00 per hour and worked 40 hours per week. His average wage in the highest quarter in his base period was \$434.62.

The employer had work available for the claimant with several different employers including Serta Manufacturing and Crescent Park. On February 10, 2012, the claimant was personally offered work at Crescent Park for Monday through Fridays at \$8.25 per hour. The claimant accepted the offer. He did not want to work on Monday February 13, 2012. He was signed up for February 14, 2012, through February 17, 2012. He was also told that he must call the employer office not later than 3:00 p.m. to confirm that he would be showing up for work for the next day. The claimant did not call until 4:15 p.m. on February 13, 2012. He was not on the list for February 14, 2012, due to his untimely call. He was again instructed to call on February 14, 2012, to confirm for February 15, 2012. He did not do this.

On February 16, 2012, the claimant called about working at Crescent Park for the week ending February 26, 2012. He was told work was available and to come in and sign up for work. The claimant did not show up.

The claimant is presently working for another employer.

REASONING AND CONCLUSIONS OF LAW:

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

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 24.22(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.

The claimant's testimony that he is able and available for work is accepted.

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 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.

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 this case established that the employer offered temporary work to the claimant on at least two occasions. The claimant accepted the work but then failed to actually show up and perform the work. This is tantamount to a refusal. The offers and refusals occurred during

the claimant's current benefit year. The claimant offered no real explanation on why he failed to come to work after indicating that he had accepted the offer of work. The jobs were full time jobs and equaled at least 75% of the claimant's average weekly wage paid during the highest quarter of his base period.

DECISION:

The decision of the representative dated March 28, 2012, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs