

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN K BEAUCHAMP
Claimant

APPEAL NO: 10A-UI-07835-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHENHALL'S STAFFING SERVICES INC
Employer

OC: 01/17/10
Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Chenhall's Staffing Services, Inc. (employer) appealed a representative's May 27, 2010 decision (reference 04) that concluded Justin K. Beauchamp (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2010. This appeal was consolidated for hearing with one related appeal, 10A-UI-07834-DT. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Mike Gowdy appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking a seasonal assignment with the employer on April 20, 2009. He worked full time at the grain business client. His last day on the assignment was on or about December 18, 2009. The assignment ended at that time because the work was completed for the season.

When the claimant came in for his final paycheck for the season on or about December 18, he was told that while there was not another assignment immediately available for him at that time, there were many work orders coming in and he should check back in for work the following week. The claimant did not recontact the employer to seek reassignment after that contact. The employer did make several attempts to contact the claimant by telephone to offer him positions that may have been suitable; however, the employer was only able to leave a voice mail message for the claimant on one occasion, January 5, 2010. That message was not returned. The employer did not verify that the claimant had in fact received the message that had been left for him.

In April 2010 the business client recontacted the employer and indicated it would be scheduling the claimant for work at that time in the new season, and the claimant resumed working for the business client on the employer's payroll. He ceased filing weekly claims for unemployment insurance benefits as of the week ending April 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

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(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer has not established that the claimant actually received any bona fide offer of work; without verification that the January 5, 2010 message was received by the claimant, the leaving of the message alone was not a bona fide offer of work required to establish a refusal. 871 IAC 24.24(1)a. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's May 27, 2010 decision (reference 04) is affirmed. The claimant did not refuse a bona fide offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css