

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

MICHAEL A BENTLEY
PO BOX 403
CLINTON IA 52732

L A LEASING INC
D/B/A SEDONA STAFFING
612 VALLEY DRIVE
MOLINE IL 61265

Appeal Number: 04A-UI-02701-RT
OC: 01/25/04 R: 04
Claimant: Appellant (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 – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant, Michael A. Bentley, filed a timely appeal from an unemployment insurance decision dated March 1, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 1, 2004, with the claimant not participating. The claimant did not call in a telephone number where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Colleen McGuinty, Unemployment Benefits Administrator, and Jackie Wilslef, Accounts Manager, participated in the hearing for the employer, L A Leasing, Inc. doing business as Sedona Staffing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. From September 8, 2003 until January 27, 2004, the claimant was assigned to IPSCO Tubulars located in Camanche, Iowa, approximately five miles from Clinton, Iowa where the claimant resides. The claimant satisfactorily completed that assignment. On February 6, 2004, the claimant was offered another position with Schultz Engineering in Princeton, Iowa approximately 13 miles from Clinton, Iowa. This position paid \$10.00 per hour for a 40-hour week or a gross weekly wage of \$400.00. The claimant's weekly benefit amount for unemployment insurance purposes is \$256.54. The claimant did not accept this position because he did not have transportation because he had lost his driver's license. When the claimant was first hired by the employer he had placed no restrictions on his availability for work and had not indicated that he did not have driver's license or transportation and in fact satisfactorily completed his assignment to IPSCO Tubulars in Camanche, Iowa approximately five miles from his residence.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant is disqualified to receive unemployment insurance benefits because he refused to accept suitable work. The claimant is disqualified to receive unemployment 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.

The administrative law judge concludes that the employer has the burden to prove that the claimant has refused to accept suitable work. Norland v. Iowa Department of Job Service, 412 N.W.2d 904, 910 (Iowa 1987). The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant refused to accept suitable work. The employer's witnesses credibly testified that the claimant was offered a position with Schultz Engineering on February 6, 2004 paying \$10.00 an hour for a 40-hour week or a gross weekly wage of \$400.00. This is far in excess of even the claimant's total average weekly wage of \$256.54. This position was in Princeton, Iowa, 13 miles from Clinton, Iowa where the claimant resided. The claimant had just completed a four-month assignment with IPSCO Tubulars in Camanche, Iowa, five miles from Clinton, Iowa. The administrative law judge concludes that the offer of work with Schultz Engineering was suitable for the claimant. However, the claimant refused this offer of work. The only reason given by the claimant was a lack of transportation and no driver's license. However, there is no real evidence that the claimant did not have transportation or a driver's license or could not get transportation. Further, the claimant had successfully completed an assignment requiring a commute of five miles and the new assignment was only eight miles more. Accordingly, the administrative law judge concludes that the offer of work made to the claimant on February 6, 2004 with Schultz Engineering was suitable and that the claimant refused to accept such offer of suitable work and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision dated March 1, 2004, reference 02, is affirmed. The claimant, Michael A. Bentley, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits, because he refused to accept suitable work.

sb/b