

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIDIER A BERUVIDES
Claimant

APPEAL NO. 10A-EUCU-00001-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

**Original Claim: 11/23/08
Claimant: Appellant (2)**

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 23, 2009, reference 05, which held claimant ineligible for unemployment insurance benefits due to a refusal to accept work. After due notice, a telephone conference hearing was scheduled for and held on February 15, 2010. Claimant participated personally. Employer participated by Victor Ochoa, Account Manager.

ISSUE:

The issue in this matter is whether claimant refused to accept a suitable offer of work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Employer made an offer of work to the claimant on September 23, 2009. That offer included the following terms: Part-time work at \$8.25 per hour. Claimant's average weekly wage is \$436.00. The offer was made in the 40TH week of unemployment. Claimant refused the offer of work because he had a temporary ankle problem that lasted four days and because the pay was too low. Claimant would have earned about \$206.00 per week working 25 hours a week. Claimant, at 65 percent of the average weekly wage, has \$283.00 weekly wage.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse a suitable offer of work. The weekly wage was too low and, as such, the work not suitable. Claimant need not accept a wage below that specified by statute, which is 65 percent of the average weekly wage. Benefits shall be allowed.

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(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.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

DECISION:

The decision of the representative dated December 23, 2009, reference 05, is reversed. Claimant is eligible to receive unemployment insurance benefits effective September 23, 2009, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw