

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAMON A VILMONT
Claimant

APPEAL NO. 07A-UI-05538-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 04/08/07 R: 02
Claimant: Appellant (3)

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 22, 2007, reference 04, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 14, 2007. Claimant participated. Employer participated through Shauna Handsaker.

ISSUE:

The issue is whether claimant refused suitable offers of work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Employer made an offer of work to claimant on April 27, 2007. That offer included the following terms: Full-time, first-shift production work for four days at \$9.00 per hour in Nevada. Claimant declined because the work was short term. The same day, Handsaker offered him long-term, full-time, first-shift bindery work in Nevada at \$9.00 per hour. Claimant said he was going to take a job with his uncle. That job did not start until June. On April 11, 2007, Handsaker offered claimant a month long, full-time seed packaging job in Slater at \$8.25 per hour on first shift, which he declined because the work was “too short term.” Claimant reported no wages during the month of April. The same day, she offered him a full-time, first-shift production job in Ames that would last at least a month and possibly longer. Claimant declined because he thought the job mixing coloring dyes was too dirty.

Claimant’s average weekly wage is \$173.17. The offers were made in the first and third weeks of unemployment. Claimant did not have a valid claim for unemployment insurance benefits at the time of the January 2007 offer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did refuse suitable offers 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(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.

The offer met the wage requirement and the terms were otherwise suitable as to shift, duration, and job duties. That a job is "dirty" or is "short term" does not render the offer unsuitable,

especially since claimant's work history included temporary employment. Thus claimant did not have a good-cause reason for the refusals. The administrative law judge does not have jurisdiction to evaluate the January 2007 offer or refusal of work since that offer of employment took place outside of the benefit year. As to the offers declined on April 11 and 27, 2007, benefits are withheld.

DECISION:

The May 22, 2007, reference 04, decision is modified in favor of the respondent. Claimant did refuse suitable offers of work. Benefits are withheld effective the week ending April 14, 2007 until such time as the claimant works in and has been paid insured wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css