

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY D SEPTER
Claimant

APPEAL NO: 12A-UI-06037-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 04/29/12
Claimant: Respondent (1)

Section 96.4-3 – Able and Available
Section 95.5-3-a – Job Refusal

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 18, 2012, reference 01, that held it did not offer suitable work to claimant on April 30, 2012, and which allowed benefits. A telephone hearing was held on June 18, 2012. The claimant participated. Darien Sloat, Fairfield branch manager, participated for the employer.

ISSUES:

Whether claimant refused an offer of suitable work.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant worked for the employer on temporary assignments beginning May 19, 2011 through April 27, 2012. His average weekly wage is \$773.80, and his weekly benefit amount is \$402.

The employer offered claimant a temp-to-hire assignment at Paint Line in Fairfield at \$10 an hour. Claimant declined the assignment due to a transportation issue where he could not ride with his wife as he had on the prior employer work assignment. He had worked 7:00 a.m. to 3:30 p.m. and the new offer would be from 5:00 a.m. to 1:00 p.m.

REASONING AND CONCLUSIONS OF LAW:

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 failed to offer claimant suitable work on April 30, 2012.

The claimant's earnings record establishes his average weekly wage is \$773.80, which is the measure whether a job offer is suitable, not the most recent wage he earned on the employer assignment that ended April 27, 2012. Most of claimant's base period wages was earned on employer temp-to-hire assignments.

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".

The administrative law judge further concludes no availability disqualification is imposed.

The claimant made satisfactory transportation arrangements to work assignments for the employer from May 19, 2011 through April 27, 2012. The employer failed to offer suitable work on the most recent assignment/job offer. Transportation is not an issue until the employer offers claimant suitable work and he declines due to a transportation issue.

DECISION:

The department decision dated May 18, 2012, reference 01, is affirmed. The employer failed to offer claimant suitable work on April 30, 2012, and no availability disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw