

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

BRIAN W THOMAS
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DAVENPORT IA 52808

TRANSHIELD LEASING COMPANY
PO BOX 466
WEST CHICAGO IL 60186-0466

Appeal Number: 04A-UI-10470-DT
OC: 08/15/04 R: 04
Claimant: Respondent (4)

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-a - Work Refusal
Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Transhield Leasing Company, doing business as TLC Leasing Company, (employer) appealed a representative's September 17, 2004 decision (reference 04) that concluded Brian W. Thomas (claimant) was qualified to receive unemployment insurance benefits in relation to the employer. After hearing notices were mailed to the parties' last-known addresses of record on a related appeal, 04A-UI-10118-DT, a telephone hearing was held on October 11, 2004. The claimant participated in the hearing. Bob Patel appeared on the employer's behalf. After the close of the October 11 hearing, the administrative law judge observed that some of the same issues were included on the hearing notice which had been issued in this appeal between the same parties, and observed that the testimony provided in the October 11 hearing dealt with the same issues

as raised in this appeal. Therefore, the administrative law judge reopened the record in appeal 04A-UI-10118-DT and combined it for hearing with this matter with new hearing notices issued on October 12, 2004. Pursuant to that notice, the hearing was reconvened on October 19, 2004 with the same participants as on October 11; both parties agreed that the testimony provided on October 11 should serve as the record for both appeals. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES: Was the claimant eligible for unemployment insurance benefits by being able and available for work? Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on August 4, 2004. He worked full time as a driver in the employer's over-the-road fleet leased to a specific contractor. His last day of work was August 4, 2004. The claimant was scheduled to pick up a load at the employer's Davenport, Iowa, yard on August 6 or August 7. However, he did not, and on August 9 he informed Mr. Patel, the employer's controller, that he could not drive until he returned to the doctor. The claimant had previously diagnosed as having panic attacks and depression and had been released to return to work with medication, but the week ending August 7 the claimant had further problems.

The claimant saw his doctor a few days after August 9; the doctor advised the claimant to take some FMLA (Family Medical Leave) to get his medication straightened out, indicating that the claimant did not have to quit his position, but that he should be able to return to driving once the proper medication balance was reached. When the claimant asked Mr. Patel for FMLA papers, indicating that the doctor had said he should be off work for about a month, Mr. Patel informed the claimant that since the employer employed less than 50 employees, the FMLA provisions did not apply. Mr. Patel told the claimant that he was going to put the claimant down on the books as having quit, and that when the claimant was better, he should come back. Mr. Patel confirmed to the claimant in writing that he was deemed to have resigned.

The claimant's doctor released him to return to work after about one month, effective on or about September 12, 2004. However, the claimant did not contact the employer or seek to return to work with the employer as he felt he had been unfairly discharged for being sick. On or about September 27, Mr. Patel contacted the claimant and told him that work was available for him if he was ready to go back to work; the claimant declined, saying that he was not ready to go back to work. Mr. Patel assumed that this was because the claimant's doctor had not yet released him; in fact, the claimant had been released but had decided not to return to work because of feeling that the employer had been unfair and discharged him.

The claimant established a claim for unemployment insurance benefits effective August 15, 2004. The claimant has received no unemployment insurance benefits after the refusal to return to work.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(1), (35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant was not able and available for work until he was released by his doctor effective on or about September 12, 2004. He would be eligible for unemployment insurance benefits as of that date, if he was otherwise eligible.

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

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(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

- b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

The claimant did refuse a suitable offer to return to work with his employer after he was released by his doctor to return to work. He did not have sufficient good cause to refuse the offer. Benefits are denied effective the week ending October 2, 2004.

DECISION:

The representative's September 17, 2004 decision (reference 04) is modified in favor of the employer. The claimant was able and available for work effective September 12, 2004. The claimant refused a suitable offer of work without good cause effective the week ending October 2, 2004. As of October 2, 2004 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

ld/tjc