

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID P OHL
Claimant

APPEAL NO. 08A-UI-02568-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

**OC: 10/28/07 R: 04
Claimant: Appellant (5)**

Iowa Code Section 96.5(3)(A) – Refusal of Suitable Work
Iowa Code Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

David Ohl filed a timely appeal from the March 6, 2008, reference 04, decision that denied benefits effective January 30, 2008, and that concluded he had refused an offer of suitable work on January 30, 2008. After due notice was issued, a hearing was held on April 1, 2008. Mr. Ohl participated. Stacy Griffith, Branch Manager, represented the employer. The administrative law judge took official notice of the December 10, 2007, reference 01, decision, the January 2, 2008, reference 02, decision, and the January 16, 2008, reference 03, decision, all of which involved the same parties and the issue of refusal of suitable work. The hearing in this matter was consolidated with the hearing in Appeal Number 08A-UI-02569-JTT.

ISSUES:

Whether the claimant refused to accept a suitable offer of employment from Adecco USA, Inc., without good cause on January 30, 2008.

Whether the claimant is able to work and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Workforce Development wage records for David Ohl indicate that Mr. Ohl established his employment relationship with Adecco USA, Inc., in 2005. The employer is a temporary employment agency. Mr. Ohl has had many temporary employment assignments through Adecco USA. Most of the assignments have lasted one to four days. The longest assignment lasted for two weeks. Mr. Ohl has generally performed light industrial work, machine operation, janitorial work and lawn work. The assignments have paid an hourly wage from \$7.50 to 10.00. The assignments have generally been in the Davenport-Bettendorf area. The furthest assignment was in Princeton, Iowa, approximately 20 miles from Mr. Ohl's home.

At 1:56 p.m. January 30, 2008, Laura Crow, Adecco USA Staffing Consultant, telephoned Mr. Ohl to offer a one-day assignment at Bettendorf schools. The assignment was to start at 3:30 p.m. on January 30 and end the same day. In other words, Adecco provided Mr. Ohl with

one hour and 34 minutes notice of the assignment. Ms. Crow told Mr. Ohl that the assignment would pay \$8.50 per hour. Ms. Crow provided all other relevant particulars concerning the proposed assignment. The assignment was approximately 15 minutes from Mr. Ohl's home in Davenport. Mr. Ohl declined the assignment. Mr. Ohl indicated that his car would not start due to the cold weather. Mr. Ohl drives an 18-year-old car that will not start in cold weather.

As part of previous unemployment insurance proceedings, the employer has alleged refusals to accept suitable work on November 15, 2007, November 21, 2007, and November 30, 2007. In each instance, a Workforce Development representative concluded the refusals were justified based on the employer's failure to provide sufficient notice of the assignment. See the December 10, 2007, reference 01, decision, the January 2, 2008, reference 02, decision, and the January 16, 2008, reference 03. The employer did not appeal these decisions and each became a final Agency decision.

Mr. Ohl refused temporary work assignments on December 7, 2007, and December 26, 2007 because his car was inoperable. Mr. Ohl refused an assignment on January 28, 2008, and told the employer he was waiting for a call from the water department. Mr. Ohl refused an assignment on March 6, 2008, and told the employer he was busy because a plumber was working at his home. The employer did not initiate unemployment insurance proceedings with regard to these refusals.

The employer's records indicate that Mr. Ohl contacted Adecco USA on the following dates to advise of his availability for assignments: December 31, January 7, January 16, February 4, February 19, March 10, March 17, and March 24. However, Mr. Ohl was not calling to indicate his general availability for work. Instead, Mr. Ohl was calling to indicate his availability for work on the dates he called.

Mr. Ohl is currently enrolled in a 25 semester hour Computer Numerical Control (CNC) machining certificate program at Scott Community College in Davenport. The program is self-paced. Mr. Ohl indicates that the program rules require that he complete the program within eight weeks of starting and that he is currently two weeks into the program. Though some of Mr. Ohl's work in the program requires consultation with a teacher who is available only after 11:00 a.m., Monday through Thursday, Mr. Ohl is able, by and large, to decide what hours to dedicate to progressing in the program. Mr. Ohl indicates that completion of the certification program is currently his primary pursuit and that he spends 25 to 30 hours per week working toward the certification. Mr. Ohl's education pursuits limit his availability for work.

Mr. Ohl recently worked a one-day assignment through Adecco on March 24, 2008. Prior to that assignment, Mr. Ohl had not worked at all since August 2007.

Workforce Development records concerning Mr. Ohl's weekly reports to Iowa Workforce Development indicate that Mr. Ohl did not continue his claim for unemployment insurance benefits beyond the benefit week that ended March 1, 2008.

Workforce Development records indicate that Mr. Ohl has been categorized as a "group 6" claimant, in other words, as a claimant whose occupation is of the nature that utilizes résumés or who is normally unable, due to factors such as occupation, distance, etc., to make in-person contacts for employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

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.

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.

Workforce Development rule 871 IAC 24.24(4) provides as follows:

Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work... If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

The evidence in the record establishes that on January 30, 2008, Adecco USA made a bonafide offer of employment to Mr. Ohl. Mr. Ohl rejected the offer. The further employment offered by the employer was reasonably suitable and comparable to the work Mr. Ohl had previously performed for the employer. The offered employment was also within the purview of Mr. Ohl's usual occupation. The evidence further indicates that the position offered to Mr. Ohl was not vacant due to a labor dispute and would not have required Mr. Ohl to join or refrain from joining a labor organization. The wages, hours, or other conditions of the offered work would not have been substantially less favorable to Mr. Ohl than conditions prevailing for similar work in the locality. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Ohl refused an offer of suitable employment from Adecco USA on January 30, 2008. The evidence further indicates that Mr. Ohl had good cause for refusing the work assignment on January 30, 2008. The evidence indicates that the employer provided insufficient notice of the proposed assignment. The employer offered the assignment approximately one and a half hour before the proposed start time. Mr. Ohl would have to travel approximately 15 minutes to get to the assignment. Mr. Ohl has a vehicle, but required more notice in order to warm the engine so the vehicle would start in cold weather. The work refusal on January 30, 2008 would not disqualify Mr. Ohl for unemployment insurance benefits. However, Mr. Ohl's availability for work must also be addressed.

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law.

24.23(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

24.23(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

24.23(37) An individual shall be deemed to have failed to make an effort to secure work if the individual has followed a course of action designed to discourage prospective employers from hiring such individual in suitable work.

Workforce Development rule 24.2(1)(c) provides, in relevant part, as follows:

c. All claimants on an initial claim shall state that they are registered for work and shall list their principal occupation. The claims taker will then assign a group code to the claimant to control the type of registration that is made. Code assignments will be based on all facts obtained at the time of the claim filing. The group codes are:

(2) Group “2” claimants are those individuals who do not otherwise meet the qualification for group “1,” “3,” “4,” “5,” or “6” under this section. Group “2” claimants may also include the following: claimants who were employed in demand occupations; irregular employment record (in reference to occupation); delay in claim filing; moved to address remote from labor market or transportation problems; unfavorable job prospects because of recent arrival in locality; farming activities; self–employment assuming otherwise eligible; students or prospective students; pensioners; domestic care or problems; previous fraud or overpayment record; physical impairment or poor health which would limit employability; personal or other restrictions (wages, hours, travel).

(6) Group “6” claimants are those individuals whose occupations are of a nature that utilize résumés or who are normally unable, due to factors such as occupation, distance, etc., to make in–person contacts for employment.

The greater weight of the evidence in the record indicates that Mr. Ohl has not met the work search requirements of Iowa Code section 96.4(3) or the availability requirements of Iowa Code section 96.4(3) at least since January 30, 2008. Although the evidence suggests a failure to meet these requirements prior to that date, the administrative law judge uses that date in light of the prior decisions allowing benefits and the employer’s election not to challenge those decisions. When questioned about the impact of his educational pursuits on his work availability, Mr. Ohl provided answers that were vague, non-committal and evasive. The weight of the evidence indicates that Mr. Ohl is a full-time student. The evidence further indicates that Mr. Ohl has created various obstacles to his re-employment. Mr. Ohl lacks reliable transportation during the cold weather season. Mr. Ohl’s educational pursuits prevent him being available at times when work is available. Mr. Ohl has provided Adecco USA with various justifications for accepting only one one-day assignment since August 2007. The greater weight of the evidence indicates that Mr. Ohl has pursued a course of action that prevents his gainful re-employment. Benefits are denied effective January 30, 2008.

The greater weight of the evidence indicates that Mr. Ohl should never have been categorized as a “group 6” claimant. Mr. Ohl does not have a professional background and does not work in an occupation that traditionally relies upon resumes. Nor does Mr. Ohl live a great distance from available work opportunities. The Claims Division shall reclassify Mr. Ohl as a “group 2” claimant, in other words, as a claimant required to make in-person employer contacts. See 871 IAC 24.2(1)(c)(2).

DECISION:

The Agency representative’s decision dated March 6, 2008, reference 04, is modified as follows. On January 30, 2008, the claimant refused as suitable offer of employment from Adecco USA.

The claimant had good cause, lack of transportation for the refusal. The refusal will not result in a disqualification for unemployment insurance benefits. Since January 30, 2008, the claimant has not met the work search or availability requirements of Iowa Code section 96.4(3). Benefits are denied effective January 30, 2008.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs