

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELBY K HARRIS

Claimant

APPEAL NO. 06A-UI-10600-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**OC: 10-23-05 R: 01
Claimant: Respondent (1)**

Iowa Code § 96.5(3)a – Work Refusal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 19, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 30, 2006. The claimant did participate. The employer did participate through Tracy Davis, Office Manager, and Ruth Gregg, Human Resources Coordinator. Employer's Exhibit One was received.

ISSUE:

Did the claimant refuse to accept a suitable offer of work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant's average weekly wage is \$525.69.

The claimant was first assigned by Advance Services, his employer, to work at Cardinal Glass beginning on November 21, 2005. He worked the 3rd shift in the temper shipping area and was initially paid \$10.75 per hour for 40 hours per week. When his assignment at Cardinal Glass ended on September 21, 2006, the claimant was being paid \$11.65 per hour for 40 hours per week.

On October 2 the claimant was offered a job working the second shift at Farley's and Sather's for \$11.60 per hour. The claimant had not previously worked the second shift. The claimant turned down the job, telling the employer he did not want to work the second shift.

On October 3, 2006, the claimant was offered another job working at Farley's and Sather's. The pay was \$10.25 per hour working the 3rd shift. The claimant refused the offer because it was not enough money. The claimant would have been paid \$410.00 per week for 40 hours work. The claimant would not have been paid 100 percent of his average weekly wage.

The claimant was offered another job sometime around October 9, 2006 for \$11.10 per hour. The claimant would have been paid \$444.00, less than his average weekly wage of \$525.69. All of the job offers made to the claimant were made during the first through fifth weeks of his

unemployment. The claimant eventually turned down the job offered, after he had initially indicated he would accept it, because it was not enough money and he was interviewing for another position.

The claimant was offered another job on November 17, which he did not take since he had accepted other employment to begin on December 11.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not refuse 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(7) provides:

(7) Gainfully employed outside of area where job is offered. Two reasons which generally would be good cause for not accepting an offer of work would be if the claimant were gainfully employed elsewhere or the claimant did not reside in the area where the job was offered.

The offers made to claimant on both October 2 and October 3 were unsuitable, as they did not meet the minimum wage requirements set out above for an offer to be considered suitable. The claimant was not required to accept the November 17 offer, as he has accepted employment elsewhere. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 19, 2006, reference 02, decision is affirmed. Claimant did not refuse a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw