

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK A OWENS
Claimant

L A LEASING INC
Employer

APPEAL 15A-UI-12983-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/15
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.5(3)a – Failure to Accept Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 18, 2015, (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 28, 2015. Claimant participated. Employer participated through Megan Francis and Collen McGuinty.

ISSUES:

Is the claimant able to and available for work?

Did claimant fail to accept a suitable offer of work and if so, was the failure to do so for a good-cause reason?

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 via telephone on November 5, 2015. That assignment was at Plastic Products Company in West Branch, Iowa. Claimant lived in Iowa City and the employer was aware prior to offering him the job that he could only accept local jobs. Claimant has to take a bus to work, it is his only transportation. Claimant had been on assignment with WestRock (formerly known as RockTenn), which was located in Iowa City. Claimant's last assignment with WestRock was from August 22, 2014 until the plant closed on October 21, 2015. Claimant was also offered an assignment by the employer on October 22, 2015, in North Liberty, Iowa, but he did not accept because there was no bus from Iowa City to North Liberty.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not fail to accept a suitable offer of work and is able to work and available for 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.

Iowa Admin. Code r. 871-24.23(4) provides:

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

(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. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code § 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 and not unemployed for failing to bump a fellow employee with less seniority. 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.

Iowa Admin. Code r. 871-24.24(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 employer was aware prior to November 5, 2015, that claimant could only accept local assignments. Claimant's last assignment was located in the same town he resided in, Iowa City. Claimant's only means of transportation for work was the Iowa City bus system. On November 5, 2015, the employer's office in Muscatine, Iowa, contacted claimant about employment in West Branch, Iowa. The new assignment was approximately thirteen miles from claimant's residence. There was not a bus route from Iowa City to West Branch. Claimant refused to accept the assignment because he did not have transportation to the assignment. The offer was unsuitable, as it did not meet the location restrictions the employer was aware of. Claimant had been working for the employer on assignment in Iowa City since June 2013; therefore, this was not a new restriction.

DECISION:

The November 18, 2015, (reference 01) decision is reversed. Claimant did not fail to accept a suitable offer of work. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld effective the week ending November 7, 2015 shall be paid to claimant.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css