

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES VANG

Claimant

APPEAL NO: 10A-UI-09436-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05 /23/10

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 June 28, 2010, reference 02, that held the claimant did not refuse a suitable offer of work on May 16, 2010, and benefits are allowed. A telephone hearing was held on August 18, 2010. The claimant participated. Holly Carter, Unemployment Specialist, participated for the employer. Employer Exhibits 1 & 2 was received as evidence.

ISSUES:

Whether the claimant refused a recall to 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 and completed six assignments for the employer from September 23, 2009 until May 14, 2010. The claimant last worked two-days as a general laborer at PDM. The claimant did not receive a further offer of work after he completed his last assignment.

The employer requested the claimant to fill-out some paperwork that is a requirement every six months when he stopped in person at the office on May 20. When the claimant recognized it would take him an hour to complete, he left to pick up his son at school, and said he would return the next day.

An employer representative telephoned the claimant on June 8 and left a message that he could work at Carriage House packing foods beginning June 16. The claimant rejected the offer, because his mother was seriously ill and in intensive care. The claimant came into work on June 18 and completed the employer requested paperwork. The claimant has not been offered any further work.

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 claimant did not receive an offer of work on May 16, 2010, and he had a good cause for refusing the employer work offer on June 8.

The employer failed to establish it communicated an offer of work to the claimant at PDM on May 16 that is two days after he completed a work assignment at the same place, and there is no disqualification for the further reason he did not have a valid unemployment claim on file.

The claimant had a good cause for refusing the June 8 offer of work based on his mother's illness.

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 that no availability disqualification is imposed on the claimant due to his mother's illness. The claimant could not have started the assignment until June 16, and he came in and completed his paperwork two days later.

DECISION:

The department decision dated June 28, 2010, reference 02, is affirmed. There is no job refusal or availability disqualification. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs