

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON R EVANS

Claimant

APPEAL NO. 07A-UI-10821-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC

Employer

**OC: 10/07/07 R: 03
Claimant: Respondent (1)**

Section 96.5-3-a – Suitable Work
Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated November 13, 2007, reference 06, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 10, 2007. Although notified, the claimant did not participate. The employer participated by Susan Schminke, co-owner.

ISSUE:

The issues in this matter are whether the claimant is able and available for work and whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on May 27, 2007, when a temporary assignment ended. On or about October 19, 2007, Remedy Intelligent Staffing contacted the claimant and offered him two prospective assignments. The claimant declined, as he was still employed elsewhere until the end of October 2007. The claimant also declined because his rate of pay at the current assignment was substantially higher than the positions offered.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant refused an offer of suitable work on or about October 19, 2007, and whether the claimant is not able and available for work. It does not.

The evidence in the record shows that an offer of work was made by the temporary employment service; however, the claimant, at the time, was employed elsewhere and was earning a substantially higher amount per hour than would be paid at the offers made by the temporary

employment service at the time. As the rate of pay offered was not equal to the amount that the claimant was earning and the claimant was employed at that time, Mr. Evans declined.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was able and available for work and that he has not refused an offer of suitable work based upon his employment status and the amount of pay he was earning at the time that the offer was made by Remedy Intelligent Staffing, Inc.

DECISION:

The representative's decision dated November 13, 2007, reference 06, is hereby affirmed. The job offer did not provide wages of at least the same amount of the claimant's recent average weekly wage.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw