

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY S RANDALL

Claimant

APPEAL NO: 10A-UI-05535-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEIBERT TRUCKING INC

Employer

OC: 01/06/08

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Seibert Trucking, Inc. (employer) appealed a representative's April 8, 2010 decision (reference 03) that concluded Anthony S. Randall (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 2010. The claimant participated in the hearing. John Meislahn appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant disqualified due to refusing an offer of suitable work? Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant has worked for the employer driving truck in the employer's construction hauling business. As of the date of the hearing, he had most recently worked during the week ending May 22, 2010. Since at least the first of the year, there has been insufficient work to provide the claimant with regular or full-time hours.

In the winter the employer also does snow removal, and will call drivers in for that work. The claimant did do snow removal with the employer during the week ending January 9, 2010. The employer had snow removal work that may have been available for the claimant on or about February 10, 2010 or other times in February, but while the employer may have attempted to call the claimant for such work, it did not make direct contact with him and did not directly offer such work to him; the claimant did not receive any messages about available work, and he did not decline or refuse any such work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of 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.

The employer did not make actual contact with the claimant and did not make a bona fide offer of work required to establish a refusal. 871 IAC 24.24(1)a. The claimant did not refuse a suitable offer of work. He would have been available for work had the employer made the offer to him. He need not be reachable at all times, day or night, to be "able and available" for work. Iowa Code § 96.4-3.

DECISION:

The representative's April 8, 2010 decision (reference 03) is affirmed. The claimant did not refuse a suitable offer of work, and has been able and available for work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs