

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY D PERRY**

Claimant

**APPEAL NO: 14A-UI-00880-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YEARWOOD CONSTRUCTION LLC**

Employer

**OC: 12/08/13**

**Claimant: Respondent (5)**

Section 96.4-3 – Able and Available

Section 96.5-3-a – Work Refusal

**STATEMENT OF THE CASE:**

Yearwood Construction, L.L.C. (employer) appealed a representative's January 13, 2014 decision (reference 02) that concluded Jeremy D. Perry (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 February 14, 2014. The claimant participated in the hearing. Tom Yearwood appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Seven were entered into evidence. 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:**

Was and is the claimant able and available for work? Is the claimant disqualified due to refusing an offer of suitable work?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently resumed working for the employer on April 13, 2013. He worked part time, about 27 hours per week, as a laborer/carpenter. Normally the employer would advise the claimant either in person or by phone the night before work was available. On or about December 6, 2013 the employer advised the claimant that the business was low on work. He therefore established a claim for unemployment insurance benefits effective December 8. The claimant's last day of work was December 19, 2013. The employer asserted there was work for the claimant on December 14, December 16, December 17, and December 18, but the employer did not inform the claimant about this work; rather, the employer asserted that the claimant had not contacted the employer to seek work. The employer further asserted that there could have been additional snow removal work available but that he had heard through another employee that the claimant did not wish to do snow removal, so the employer never called and offered the claimant any snow removal work.

There had been some contact between the claimant and the employer on or about January 2, 2014 about some potential work; the employer advised the claimant that the work would not be available until at least January 8 or January 9. The employer asserted that on January 6 the claimant had been informed to be at the employer's home on the morning of January 8 to go to the job; the claimant denied that there had been any further communication after January 2, and he did not know the employer was going to the job on the morning of January 8. The employer has not subsequently contacted the claimant about any available work.

#### **REASONING AND CONCLUSIONS OF LAW:**

The claimant had been advised that he was effectively at least temporarily laid off because the employer was slow on work. The first question is whether the claimant is and was able and available for work after that at least temporary separation. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. If a person is temporarily separated from his employment, he is still not able and available for work if the evidence "establish[es] that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer" was not working its normal hours. 871 IAC 24.23(41). Particularly where the claimant had been advised that the employer was "low on work," it is not required of the claimant to make continued or routine contact with the employer to determine if the employer might have work for the claimant in order for the claimant to be "able and available" for work.

"The best method of testing availability for work is an offer of work or job test." 871 IAC 24.22(2)b. The resulting issue in this case is whether the claimant refused a suitable offer of work. Iowa Code § 96.5-3 provides that a claimant will be disqualified for benefits if he has failed without good cause to accept suitable work when offered. However, applying this statute, 871 IAC 24.24(1)a provides that in order for there to be a disqualification for a refusal of work, there must have been a bona fide offer of work to the claimant by personal contact and a definite refusal was made by the claimant.

In this case, the employer did not establish that there was a completed communication to the claimant of an actual or bona fide offer of specific work for a specific day, and has not established that there was a definite refusal of work. Benefits are allowed, if the claimant is otherwise eligible.

#### **DECISION:**

The representative's January 13, 2014 decision (reference 02) is affirmed as modified with no effect on the parties. The claimant is and has been able and available for work; he did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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