

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN R MILLER
Claimant

APPEAL NO. 14A-UI-04890-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 02/09/14
Claimant: Appellant (1)

Iowa Code Section 96.5(3) – Refusal of Suitable Work

STATEMENT OF THE CASE:

Steven Miller filed a timely appeal from the May 2, 2014, reference 03, decision that disqualified him for benefits based on an agency conclusion that he had willfully discouraged Aventure Staffing & Professional from hiring him on March 20, 2014. After due notice was issued, a hearing was held on May 30, 2014. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-04891-JTT. Mr. Miller participated. Deb Miller represented the employer.

ISSUE:

Whether the claimant refused an offer of suitable work on or about March 20, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Aventure Staffing & Professional is a temporary employment agency. Steven Miller began his employment with Aventure Staffing in 2012. Prior to establishing the claim for benefits that was effective February 9, 2014, Mr. Miller performed work in three full-time, temporary, machine-operator work assignments at Montezuma Manufacturing in Montezuma. Prior to establishing the claim for benefits that was effective February 9, 2014, Mr. Miller last performed work for the employer on February 8, 2014. Mr. Miller has generally worked the third shift at Montezuma Manufacturing, with an 11:30 p.m. start time. The assignments at Montezuma Manufacturing have paid \$14.00 per hour. At all relevant times, Mr. Miller has lived approximately 10 miles southwest of Grinnell. Mr. Miller commuted to Montezuma.

On March 20, 2014, Roxanne Minner, Grinnell Branch Manager for Aventure Staffing & Professional, contacted Mr. Miller to offer him a full-time, temp-to-hire work assignment at Dejong Manufacturing in New Sharon. New Sharon is about 15 miles from Mr. Miller's home. Ms. Minner told Mr. Miller that the assignment would be first shift, 5:00 a.m. to 4:00 p.m., Monday through Friday, 50-60 hours per week and would pay \$12.00 per hour. Ms. Minner told Mr. Miller that the position would be a laser machine operator position. Mr. Miller told Ms. Minner that he wanted to know more about the assignment before he committed to it. Mr. Miller wanted to know what the job would pay if Dejong Manufacturing

decided to hire him directly at some point in the future. Mr. Miller wanted to know what benefits the job would provide if Dejong Manufacturing decided to hire him directly at some point in the future. Mr. Miller was unhappy with the day-shift hours. Mr. Miller's desire for third-shift hours was a matter of personal preference without any underlying need to work third-shift hours. The assignment was offered during the sixth week of Mr. Miller's claim for unemployment insurance benefits. Mr. Miller's highest earning base period quarter was the fourth quarter of 2012, when his average weekly wage from the assignment at Montezuma Manufacturing was \$775.79. 75 Seventy-five percent of \$775.79 is \$581.84. The assignment at Dejong Manufacturing would offer \$480.00 for the first 40 hours each week and, at minimum, another \$180.00 per week in overtime pay for 10 additional hours of work. That would bring the total minimum gross pay per week to \$660.00. Mr. Miller rejected the offer for the assignment at Dejong Manufacturing.

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 weight of the evidence in the record establishes that the employer made a bona fide offer of suitable work to Mr. Miller on March 20, 2014 and that Mr. Miller rejected that offer without good cause. The nature of the machine operator work was sufficiently similar to work Mr. Miller had historically performed. The work involved a short, reasonable commute. Given Mr. Miller's rural residence, any employment would involve a commute. Mr. Miller's preference for overnight work hours did not constitute good cause for rejecting daytime work hours. Mr. Miller's claim for benefits had been in effect for six weeks and the wages offered equaled or exceeded 75 percent of his average weekly wage during his highest earning base period quarter. The work offered would not have negatively impacted Mr. Miller's health, safety, or morals. Because Mr. Miller rejected an offer of suitable work without with good cause he is disqualified for benefits until he has earned 10 times his weekly benefit amount and must meet all other eligibility requirements.

DECISION:

The claims deputy's May 2, 2014, reference 03, is affirmed. The claimant rejected an offer of suitable work without with good cause on or about March 20, 2014. The claimant is disqualified for benefits until he has earned 10 times his weekly benefit amount and must meet all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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