

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYLER A TAUBER**  
Claimant

**APPEAL NO: 10A-UI-14542-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**OC: 09 /19/10**  
**Claimant: Respondent (4-R)**

Section 96.4-3 – Able and Available  
Section 95.5-3-a – Job Refusal  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 27, 2010, reference 01, that held the claimant was not offered suitable work on September 27, 2010, and benefits are allowed. A telephone hearing was held on December 10, 2010. The claimant did not participate. Jim Brunno, Partner, and Jason Harpenau, Staffing Specialist, participated for the employer. Employer Exhibits 1, 2 and 3 was received as evidence.

**ISSUES:**

Whether claimant was able and available for work.

Whether the claimant refused a recall to suitable work.

Whether claimant is overpaid benefits.

**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 for the employer on assignment at MetLife as a full-time data entry person at \$12.00 per hour from January 2009 to September 2009. The claimant completed the assignment and the employer did not offer him any further work at that time.

The employer had no further interest in employing the claimant until it received notice of his September 19, 2010 unemployment claim filed September 19, 2010. The claimant's average base period wage is \$481.38. The employer has incurred a substantial increase of its employer tax rate with the department in the past year, and it did not want this claim to contribute to it.

An employer staffing specialist left a voicemail message and sent an e-mail to claimant on September 27 checking to see if claimant was available and looking for work, and respond with a call. The staff person sent claimant a follow-up e-mail on September 29 with additional

information that the employer had several positions available, and requesting a call. The claimant did not respond.

The claimant called on October 18 the day before the department fact-finding interview, and he acknowledged he received the employer contacts. Staffing specialist Harpenau offered claimant by e-mail a temp-to-hire collections position at \$12.50 per hour for an Ankeny client requesting a response. The specialist confirmed by e-mail to claimant on October 28 that he rejected the temp-to-hire position at Praxair. The claimant did not want to drive the distance from his West Des Moines residence to Ankeny. The job offered and the claimant's residence is located in Polk County.

The claimant called on December 7 stating he was not available to participate. The claimant has received benefits on his unemployment claim.

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

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".

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 a suitable offer of work on September 27 and 29, 2010, and no disqualification is imposed.

The administrative law judge further concludes the claimant refused an offer of suitable work with the employer effective October 28, 2010, and a benefit disqualification is imposed.

After the claimant completed his assignment for the employer in September 2009, it lost interest in him until he filed an unemployment claim and the employer recognized it was liable. While claim liability and tax rates are a legitimate concern for the employer, they are not factors in determining whether a former employee is or is not entitled to unemployment benefits.

The employer September e-mails to claimant are nothing more than "feelers" to see if the claimant is interested in employment rather than a specific job offer with a particular client at a certain pay rate. These communications do not constitute a suitable offer of work.

The employer October 27/28 e-mails and phone contact do offer claimant a specific job for a particular client at a certain pay rate and it meets the suitable offer of work criteria by exceeding the base period wage (\$500.00 – 40 hours x \$12.50 per hour) of \$481.00. Since the employment was located in the claimant's county of residence, distance to the job is not a good cause for refusal.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

- a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on his current claim, the overpayment issue is remanded to Claims for an investigation and decision.

**DECISION:**

The department decision dated September 19, 2010, reference 01, is modified. The claimant did not receive a suitable offer of work September 27, 2010, and no disqualification is imposed. The claimant refused without good cause a suitable offer of work on October 28, 2010, and he is disqualified. Benefits are denied beginning October 31, 2010 until the claimant has worked in and is paid wages for insured work, equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/css