

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD R WILLIAMS
Claimant

APPEAL NO. 11A-UI-04629-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALSAKER CORPORATION
Employer

OC: 01/16/11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Donald Williams (claimant) appealed a representative's April 11, 2011 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he refused suitable work with Alsaker Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 3, 2011. The claimant was represented by Stuart Cochrane, Attorney at Law, and participated personally. The claimant's wife, Darlene Williams, and friend, Theodore Grim, participated on behalf of the claimant. The employer participated by Kim Dunbar, Payroll Administrator/Human Resource Generalist, and Molly Rowe, General Manager.

ISSUE:

The issue is whether the claimant refused suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 22, 2010, as a part-time maintenance/janitorial worker. The employer told the claimant he was terminated on January 15, 2011. The claimant's wife called the general manager on January 18, 2011, asking why the claimant was fired. The wife told the general manager that the claimant's actions were due to a medical condition. The general manager told the wife to have the claimant call. On January 18, 2011, the claimant called the general manager. The claimant, his wife, and his friend listened to the general manager's call on speaker phone. The general manager told the claimant to provide a doctor's note showing that he rested his head on the desk due to a medical condition. If he did so, the employer would sit down with the claimant and talk about a possible return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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.

There was no actual offer of work made by the employer. The employer's discussion of a possible job offer was contingent on other matters. The claimant is not disqualified from receiving unemployment insurance benefits.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was released to return to work with, and later, without restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's April 11, 2011 decision (reference 02) is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs