

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK B NZOMBO
Claimant

APPEAL NO. 11A-UI-09578-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

**OC: 05/15/11
Claimant: Respondent (1)**

Section 96.5-1-j – Separation from Temporary Employment
Section 96.5-3-a – Failure to Accept Suitable Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 28, 2011, reference 02, that concluded the claimant completed a temporary work assignment and contacted the employer within three days. A telephone hearing was held on August 12, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Kelly Harris participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Did the claimant fail to accept an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits effective May 16, 2010. His average weekly wage based high quarter base-period wages was \$542.75.

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer as a forklift driver on a temp-to-hire assignment at Jenco Company at a rate of \$10.75 from July 19, 2010, to December 10, 2010. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

Jenco Company wanted to hire the claimant, but he did not pass a background check and Jenco asked to have him removed from the assignment. He was informed on December 10, 2010, that his assignment had ended by the recruiting representative, Shona Lemke. The next day, the claimant contacted Lemke and asked if there were any opening but there was nothing available.

The claimant filed an additional claim for unemployment insurance benefits effective December 5, 2010. The claimant was offered an assembly position at Whirlpool in Amana, Iowa, on January 28 at rate of pay of \$9.00 per hour for 40 hours of work, but he was out of town at the time the call was made. He called the employer on January 30 and was again offered the position. He called the employer on January 31 and stated that he could not accept the job. When the claimant was offered the job again on March 22, 2011, the claimant stated the pay was too low.

On March 31, 2011, the claimant was offered a full-time position at Heintz Company in Cedar Rapids at \$9.00 per hour. The claimant declined the job.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant satisfied the requirements of Iowa Code § 96.5-1-j and is not disqualified based on the reasons for his separation from employment as he did not voluntarily quit employment and was not discharged for misconduct.

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

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....

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. 379.925

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

The wages for each of the jobs offered the claimant were less than the minimum provided by Iowa Code § 96.5-3-a. He is not disqualified based on these job offers.

DECISION:

The unemployment insurance decision dated June 28, 2011, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css