

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCAS R KRESS

Claimant

APPEAL NO: 13A-UI-09529-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 02/10/13

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's August 15, 2013 decision (reference 03) that concluded Lucas R. Kress (claimant) was qualified to receive unemployment insurance benefits in conjunction with a potential offer of work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2013. This appeal was consolidated for hearing with one related appeal, 13A-UI-09528-DT. The claimant participated in the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer's Exhibits One, Two, and Three 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.

ISSUE:

Is the claimant disqualified due to refusing an offer of suitable work?

FINDINGS OF FACT:

The employer is a temporary staffing agency. The claimant's first and to date only assignment through the employer began on June 17, 2013. He worked full time as a welder at the employer's Marion, Iowa business client on the thirteenth shift through July 23, 2013. The employer's representative told the claimant that afternoon that the business client was ending the assignment because there was not sufficient work for all employees. The business client also informed the employer that the claimant's assignment was ended due to a lack of work.

After the claimant finished his shift on the afternoon of July 23 he went immediately to the employer's office in Cedar Rapids. The employer relied upon second-hand testimony to assert that the claimant did not request reassignment from the employer either on that day or otherwise within three days of the end of the assignment as required by the employer's policies to avoid being considered to be a voluntary quit. However, the claimant testified that when he went to the employer's Cedar Rapids office he immediately asked the employer's representative in that office if the employer had any other work. That representative told him the only work available was working starting the next day at the city dump for \$9.00 per hour. The claimant

declined that work because the wage was too low. The representative then indicated that there was no other work available at that time.

The claimant had established an unemployment insurance benefit year effective February 10, 2013. The statutory calculation using the high quarter of the base period wages for purposes of determining his eligibility concluded that his average weekly wage was \$775.86, which based on a 40-hour week is about \$19.00 per hour. The claimant's employment prior to establishing his claim had been at a rate of \$15.00 per hour, but he was typically working about 50 hours per week. After the ending of the assignment he reactivated his claim by filing an additional claim effective July 21, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

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.

The offer of work made by the employer of a position paying \$9.00 was not at least one hundred percent of the claimant's average weekly wage for the high quarter of his base period. Therefore, the work offered was not "suitable," and the claimant's refusal of the offer was not disqualifying.

DECISION:

The representative's August 15, 2013 decision (reference 03) is affirmed. The claimant did not refuse a suitable offer of work. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css