

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J HANUS

Claimant

APPEAL NO: 14A-UI-13321-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 06/29/14

Claimant: Respondent (1)

Section 96.5-3-a – Work Refusal

STATEMENT OF THE CASE:

Advance Services, Inc. (employer) appealed a representative's December 23, 2014 decision (reference 01) that concluded Todd J. Hanus (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2015. 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 employment firm. The claimant started working for the employer on September 3, 2013. He worked full time as an assembler at the employer's Pella, Iowa business client. His last day of work was January 4, 2014. He was laid off for lack of work at that time.

On March 4 the employer contacted the claimant to offer returning to work with that same business client with a .50 pay increase to \$11.50, to start on March 10. The employer asked the claimant to come down to take care of some paperwork, and the claimant did so. A drug test was going to be required prior to starting the new assignment, so prior to coming to the employer's office on March 4 the claimant asked if he would have to do a drug test that day. He asked because he has a medical condition which can affect his ability to provide a urine sample. The on-site representative declined to tell the claimant that there would be a drug test that day. When the claimant arrived, he had only brought one form of identification rather than two as requested, but he completed paperwork and then was asked to provide a urine sample. He tried to, but as he had voided prior to arriving at the employer's location, he was unable to do so.

After waiting about 20 minutes to see if he could provide a sample, he asked if he could do the drug test the next day when he was going to return with the second form of identification. The employer's on-site representative told him that it was up to him, but did not tell him that if he left that day it would be deemed to be a refusal to test; she also did not offer him the option of other methods of testing, such as by a blood sample, which the claimant had been willing to do.

When the claimant came back in on March 5 with his second form of identification and prepared to provide a urine sample, he was told that by leaving the prior day he had refused the drug test and that he therefore was not eligible to be hired onto the assignment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant refused a suitable offer of work.

Iowa Code § 96.5-3-a provides in pertinent part:

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. ... 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.

Rule 871 IAC 24.24(1)a provides in pertinent part:

In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. ...

While an offer was initially made by the employer, the claimant's action of leaving the employer's site on March 4 without providing a urine sample due to a medical condition was not a definite refusal of the offer of work. Under the circumstances of this case, the employer in effect withdrew its offer of work to the claimant, rather than the claimant refusing the offer of work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's December 23, 2014 decision (reference 01) 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/pjs