

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE L WEST
Claimant

APPEAL NO. 10A-UI-07502-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION STAFFING SERVICES INC
Employer

OC: 04/11/10
Claimant: Respondent (2)

Iowa Code Section 96.5(3)(a) – Refusal of Suitable Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 13, 2010, reference 01, decision that allowed benefits based on agency conclusion that employer had not made an offer of employment on April 9, 2010. After due notice was issued, a hearing was held on July 12, 2010. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing did not participate. Elle Soundara, Executive Assistant, represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative records concerning benefits paid to claimant, which records indicate no benefits have been paid to the claimant in connection with the claim established April 11, 2010.

ISSUE:

Whether the claimant refused to accept a suitable offer of employment on or about April 9, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Debbie West had to temporary work assignments through the employer. The first assignment started in September 2009 and ended in October 2009, when the claimant completed the assignment. The second full-time assignment started on March 30, 2010 and ended on April 9, 2010, when the client business and the assignment because the claimant was not able to keep up with the work.

On April 9, 2010, Tiffany Lewis, Recruiting Manager, telephoned Ms. West to advise her that the assignment was ended. Ms. West was still at the assignment, so Ms. Lewis said only that she needed to speak to Ms. West. Ms. West called back when the workday was done, at which time Ms. Lewis notified Ms. West that the assignment was ended. Ms. Lewis offered Ms. West a new assignment with the same wage but different work hours. The hours of the most recent assignment were 7:00 a.m. to 3:30 p.m., Monday through Friday. The hours of the proposed new assignment would be third-shift, approximately 10:30 p.m. to 7:30 a.m. The assignment would be located in West Des Moines. Ms. West lives in Des Moines. Ms. West explained that she had started a part-time job at Target and that the daytime hours of the most recent

assignment meshed well with the part-time hours at Target. The hours of the proposed new work assignment would not conflict with Ms. West's work hours at Target. Ms. West had worked overnight hours in the first assignment with the employer, which had been completed back in October 2009. Ms. West refused the proposed new work assignment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-3-b 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.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

871 IAC 24.24(14)(a)(b) provides:

Failure to accept work and failure to apply for suitable work. Failure to accept work and failure to apply for suitable work shall be removed when the individual shall have worked in (except in back pay awards) and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

(14) Employment offer from former employer.

a. The claimant shall be disqualified for a refusal of work with a former employer if the work offered is reasonably suitable and comparable and is within the purview of the usual occupation of the claimant. The provisions of Iowa Code section 96.5(3)"b" are controlling in the determination of suitability of work.

b. The employment offer shall not be considered suitable if the claimant had previously quit the former employer and the conditions which caused the claimant to quit are still in existence.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. 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. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The evidence in the record establishes that the employer made a bonafide offer of employment to Ms. West on April 9, 2010 and that Ms. West rejected the offer. The further employment offered by the employer was reasonably suitable and comparable to the work Ms. West had previously performed for the employer in her first assignment. The offered employment was also within the purview of Ms. West's usual occupation. The evidence further indicates that the position that were offered to Ms. West was not vacant due to a labor dispute and would not have required Ms. West to join or refrain from joining a labor organization. The wages, hours, or other conditions of the offered work would not have been substantially less favorable to Ms. West than conditions prevailing for similar work in the locality. The weight of the evidence in the record indicates that Ms. West refused the new assignment without good cause. Accordingly, Ms. West is disqualified for benefits until she had worked in and been paid for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Ms. West.

Because there has been no payment of benefits, there is no overpayment issue to address.

DECISION:

The Agency representative's decision dated May 13, 2010, reference 01, is reversed. The claimant refused an offer of suitable employment from the former employer on April 9, 2010 without good cause. Effective April 9, 2010, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css