

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE R VASQUEZ

Claimant

APPEAL NO. 07A-UI-09841-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

**OC: 10/01/06 R: 01
Claimant: Respondent (4)**

Section 96.5(3)(A) – Refusal of Suitable Work
871 IAC 24.24(14) – Employment Offer From Former Employer
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Advance Services, Inc., filed a timely appeal from the October 10, 2007, reference 03, decision that allowed benefits and that concluded there was no offer of work on September 10, 2007. After due notice was issued, a hearing was held on November 6, 2007. Claimant Jose Vasquez participated. Sue Peterson, Human Resources Coordinator, represented the employer. Spanish-English interpreter Oliver Koch assisted with the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and of base period wages reported for the claimant. Exhibits One and Two were received into evidence.

ISSUES:

Whether the claimant refused to accept a suitable offer of employment on September 10, 2007.

Whether the claimant refused to accept a suitable offer of employment on October 19, 2007.

Whether the claimant has been available for work since he established the additional claim for benefits that was effective August 26, 2007.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jose Vasquez established an additional claim for benefits that was effective August 26, 2007 and received benefits. Those benefits were initially associated with an October 1, 2006 original claim date and benefit year that ended October 7, 2007. Mr. Vasquez's claim for benefits extended into the next benefit year that commenced on October 7, 2007. To date, Mr. Vasquez has received \$3,339.00 in connection with the additional claim for benefits established on August 26, 2007. Mr. Vasquez has received benefits totaling \$682.00 for the two-week period of October 21, 2007 through November 3, 2007.

The additional claim for benefits was prompted by Mr. Vasquez's layoff from a temporary work assignment at Wells Dairy in LeMars. That work assignment had been through Advance

Services in Sioux City. The assignment had commenced on February 26, 2007 and ended on August 30, 2007. The assignment had been full-time, 3:00 a.m. to 1:00 p.m., and had paid \$9.73 per hour. Throughout the assignment, Mr. Vasquez resided in Sioux City and commuted the 25-30 miles to LeMars. The day after the layoff, Mr. Vasquez went to the Advance Services office and notified the employer that, thereafter, he would only be available for assignments in the Sioux City area. Mr. Vasquez cited the condition of his car as the reason he no longer wanted to work outside Sioux City. Though Mr. Vasquez utilized an interpreter for the hearing, the employer was able to communicate effectively with Mr. Vasquez in English without the use of an interpreter.

On September 10, 2007, Advance Services Branch Manager April Fetterman documented on the employer's computer-based phone log system that she had telephoned Mr. Vasquez on September 10, 2007 and had offered him a position at Wells Dairy in LeMars. Ms. Fetterman documented that Mr. Vasquez declined the position because he had sold his car and needed work in Sioux City. The computer-based notes provide no additional information. Ms. Fetterman continues with Advance Services, but did not testify. Mr. Vasquez denies that the contact occurred.

On October 16, Mr. Vasquez went to Advance Services to inquire about assignments in Sioux City.

On October 19, Human Resources Coordinator Sue Peterson telephoned Mr. Vasquez and offered Mr. Vasquez his choice of two open positions at Wells Dairy in LeMars. Both positions were full-time day shifts that would pay the same wage Mr. Vasquez had previously earned from his at Wells Dairy. Mr. Vasquez's stated reason for rejecting the first position was that the position was for 36-40 hours per week and Mr. Vasquez wanted more hours. Mr. Vasquez's reason for rejecting the second position, which offered 40 hours or more, was that it was too far to drive to LeMars and that he was only interested in Sioux City assignments. At the time Mr. Vasquez rejected the October 19 offers he continued to own and drive the same vehicle that had transported him to his prior six-month assignment in LeMars.

Since establishing his claim for benefits, Mr. Vasquez has looked for full-time day-shift work in the Sioux City area.

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 employer has failed to produce sufficient direct and satisfactory evidence to prove, by a preponderance of the evidence, that a bona fide offer of employment was made on September 10, 2007. The employer alleged Ms. Fetterman made the contact with Mr. Vasquez on that date. However, the employer failed to produce testimony from Ms. Fetterman. Ms. Fetterman's electronic log of the call provides sufficient evidence to prove there was indeed a call on that date, but does not provide sufficient detail of the contact to allow the administrative law judge to conclude a bona fide offer was made or rejected. The fact that Ms. Fetterman communicated the details of the proposed assignment to TALX UC eXpress on September 11 does not prove that she shared those same details with the claimant on September 10.

The greater weight of the evidence does establish that on October 19, 2007, Ms. Peterson made two bona fide offers of employment to Mr. Vasquez. The evidence indicates that the conditions of the offered employment were very similar to the conditions of Mr. Vasquez's prior six-month assignment at Wells Dairy in LeMars. The work in question was reasonably suitable and within the purview of Mr. Vasquez's usual occupation. The evidence indicates that Mr. Vasquez had commuted to the prior assignment for six months. The greater weight of the evidence fails to establish that Mr. Vasquez lacked reliable transportation to get to a new assignment in LeMars. The evidence indicates instead that Mr. Vasquez merely decided he no longer wanted to work outside the Sioux City area.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Vasquez refused an offer of suitable employment from Advance Services on October 19, 2007, without good cause. Accordingly, Mr. Vasquez is disqualified for benefits effective October 21, 2007 until he had worked in and been paid for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged for benefits paid to Mr. Vasquez for the period after October 19, 2007.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Mr. Vasquez has been disqualified for benefits effective October 21, 2007, the benefits he has received since that date constitute an overpayment that he must repay. Mr. Vasquez is overpaid \$682.00.

DECISION:

The Agency representative's decision dated October 10, 2007, reference 03, is modified as follows. There was no bona fide offer of employment on September 10, 2007. On October 19, the claimant refused two suitable offers of employment without good cause. Effective

October 21, 2007, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid \$682.00 for benefits he has received since October 21, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs