

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RON K MILLER

Claimant

APPEAL NO. 10A-UI-05684-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC

Employer

**Original Claim: 02/14/10
Claimant: Respondent (5)**

Section 96.5-3-a – Work Refusal
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Spherion Staffing, L.L.C. (employer) appealed a representative's April 9, 2010 decision (reference 01) that concluded Ron K. Miller (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 June 2, 2010. The claimant participated in the hearing. Misty Evans appeared on the employer's behalf. 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.

ISSUES:

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

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on July 20, 2009. He primarily worked as a yard worker/general laborer at the employer's grain elevator business client in Belmond, Iowa. He most recently worked there on or about December 18, 2009.

On February 19, 2010, the employer contacted the claimant about returning to the business client for at least one day beginning Monday, February 22, 2010; the claimant accepted. However, the claimant was then a no-call, no-show for work that day. The client informed the employer, and the claimant was replaced on the assignment.

The claimant had gone out of town on Sunday with his girlfriend to drop off a family member in Afton, Iowa, with the intention of returning home that evening and reporting for work the next morning. However, while out of town the transmission in the claimant's vehicle went out, and he was unable to return home until early on the morning of Wednesday, February 24. He had not

called to report the absence because, not anticipating he would not be returning home on Sunday evening, he had not taken his phone with him containing his contact numbers for the employer. Immediately upon returning home on February 24, he contacted the employer and explained what had happened. The claimant would have been able to report for work beginning February 24 through the rest of the week had work been available for him.

REASONING AND CONCLUSIONS OF LAW:

The primary issue in this case is whether the claimant refused a suitable offer of work without good cause.

Iowa Code section 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 employer did make a bona fide offer of suitable work to the claimant. The claimant's failure to report for that work as scheduled was in effect a refusal of that offer of work. However, the refusal still would not be disqualifying if it was for a good cause. "Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases." 871 IAC 24.24(4). As a result, the claimant's effective refusal of the work available to him on February 22 due to lack of transportation was for good cause and does not result in a disqualification.

The resulting issue is whether the claimant's unavailability for work on February 22 results in a disqualification as not being able and available for work. With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. The claimant was out of town and unavailable for work Monday and Tuesday, February 22 and February 23. However, he had returned and was available for work beginning the morning of Wednesday, February 24. As he was available for the majority of the regular work week, for eligibility purposes for that week, he was able and available for work. 871 IAC 24.22(2)(h); 871 IAC 24.23(25). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 9, 2010 decision (reference 01) is affirmed as modified. The claimant did refuse a suitable offer of work, but for good cause. He was sufficiently able to work and available for work the majority of the workweek during the benefit week ending February 27, 2010. 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/kjw