

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELBY R JACK
Claimant

APPEAL NO. 12A-UI-01677-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHENHALL'S STAFFING SERVICES INC
Employer

OC: 01/08/12
Claimant: Respondent (1)

Section 96.5-3-a – Offer of Work

STATEMENT OF THE CASE:

Employer filed a timely appeal from an unemployment insurance decision dated February 16, 2012, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held March 8, 2012. The claimant did not participate. The employer participated by Ms. Heather Quist, Office Manager.

ISSUE:

At issue is whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Shelby Jack began employment with Chenhall's Staffing Services Inc. on March 20, 1996 and continues to be employed seasonally at a client employer, CHS.

After completing seasonal work for the client employer, the claimant last performed services on December 24, 2011. He was then laid off until the season resumed in January.

Prior to his regular assignment through the temporary service beginning, the employer attempted to contact Mr. Jack on Friday, January 13 for a temporary job that was to begin the following Monday, January 16, 2012. A message was left at Mr. Jack's telephone number. The claimant did not respond to the message. Mr. Jack contacted the temporary service two times the following week about tax matters but did not bring up the subject of the message left potentially offering him work.

It is the employer's position that Mr. Jack repeatedly attempts to avoid calls offering him work as he prefers only to accept assignments with CHS through Chenhall's Staffing Services Inc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that an offer of suitable offer had been made and that the claimant refused an offer of suitable work.

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.

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.

Although the evidence in the record establishes that the offer of work made to Mr. Jack was made in good faith and the employer believed that the offer was suitable based upon the claimant's prior work history, the evidence in the record does not establish the requisite personal contact with the claimant. The evidence establishes that a message was left at a telephone number where Mr. Jack resides. Although the employer believes that the claimant received the message there is no evidence in the record to establish that the claimant did receive the offer of definitely or made a definite refusal of the offer.

The law provides a reasonable alternative to employers who believe that individuals are not responding to offers of work. The employer has the option of offering work or recalling an individual to work by registered letter. An offer by registered letter is deemed to be sufficient personal contact. Because the evidence in the record does not establish the requisite contact the administrative law judge cannot grant the employer the relief they seek in this matter although, the administrative law judge is sympathetic to the employer's situation.

DECISION:

The unemployment insurance decision dated February 16, 2012, reference 01, is affirmed. No personal contact with the claimant offering suitable work has been established. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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