

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAWN A LOWE**  
Claimant

**APPEAL NO. 08A-UI-03179-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J W READY MIX AND CONSTRUCTION INC**  
Employer

**OC: 12/02/07 R: 01**  
**Claimant: Respondent (1R)**

Iowa Code § 96.5(3)a – Work Refusal  
Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 20, 2008, reference 02, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 15, 2008. Claimant participated. Employer participated through John Wirtjers.

**ISSUE:**

The issue is whether claimant refused a suitable offer of work, if so, whether the refusal was for a good cause reason, and whether he is available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a truck driver working full time seasonally. At about 8:30 p.m. on February 28 employer called claimant to ask him to work the following morning. His niece just had brain surgery that day and he planned to be at the hospital on February 29 when she regained consciousness and was able to have visitors so he declined. He was otherwise available for work that week. Employer sent him a letter terminating the employment on March 1, 2008. The separation issue has not yet been resolved at the claims level and both parties would not waive the fact-finding interview so the matter must be remanded.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant had a good cause reason to refuse a suitable offer of work.

Iowa Code § 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.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant had a good cause reason for the refusal because of the last minute nature of the offer of work and his niece's medical condition. Furthermore, claimant was available for work the majority of the work week otherwise. Benefits are allowed.

**DECISION:**

The March 20, 2008, reference 02, decision is affirmed. Claimant had a good cause reason to refuse a suitable offer of work and he was available for work the majority of the week. Benefits are allowed, provided claimant is otherwise eligible.

**REMAND:**

The separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs