

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD C DEMOSS**  
Claimant

**APPEAL NO. 12A-UI-11184-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 08/12/12**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 11, 2012, reference 01, decision that allowed benefits based on an agency conclusion that claimant Richard DeMoss refused an offer of employment on August 22, 2012 for good cause in light of the wage offered. After due notice was issued, a hearing was held on October 9, 2012. Claimant Richard DeMoss did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Chad Baker represented the employer and presented testimony through Trisha Atkinson. Exhibit One was received into evidence. The administrative law judge took official notice of the agency's administrative record of Mr. DeMoss's average weekly wage from his highest earning base period quarter. The administrative law judge took official notice of the agency's administrative record indicating that no benefits have been disbursed to Mr. DeMoss in connection with the August 12, 2012 claim.

**ISSUE:**

Whether Mr. DeMoss refused an offer of suitable work without good cause on August 21 or 22, 2012.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Richard DeMoss established a claim for unemployment insurance benefits that was effective August 12, 2012. Mr. DeMoss' highest quarterly base period wages are from the first quarter of 2012. Mr. DeMoss's average weekly wage for that quarter was \$334.23.

L A Leasing/Sedona Staffing is a temporary employment agency. Trisha Atkinson is Branch Manager for the Maquoketa branch. On August 21, 2012, Trisha Atkinson spoke to Mr. DeMoss by telephone to offer him a full-time, temporary assignment at Maquoketa Web Printing in Maquoketa. The assignment was to start the next day. Ms. Atkinson told Mr. DeMoss that the work hours would be 6:00 a.m. to 4:30 p.m., five days per week. Mr. DeMoss would get a 30-minute unpaid lunch break. Ms. Atkinson told Mr. DeMoss that the wage was \$7.50 per hour. The weekly wage for the assignment at Maquoketa Web Printing would have been at

least \$356.00 for 47.5 hours of work per week. This figure does not factor in any overtime pay differential. Ms. Atkinson told Mr. DeMoss that the assignment was to start the next day. Mr. DeMoss said that he would accept the assignment. However, Mr. DeMoss did not appear for the assignment the next day or contact the employer to indicate a need to be gone from the assignment. Ms. Atkinson called Mr. DeMoss's number and left a message for him to call her back. Mr. DeMoss did not respond to that message.

## **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge notes that Mr. DeMoss failed to appear for, participate in, or present any evidence in connection with the appeal hearing.

If an unemployment insurance claimant fails, without good cause, to accept an offer of suitable work without good cause, the claimant is disqualified for unemployment insurance benefits until he has worked in and been paid for insured work equal to 10 times his week unemployment insurance benefit amount through insured work. See Iowa Code section 96.5(3). The Code section does not specify what constitutes a work refusal.

Factors to be considered in determining whether the work is suitable include 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 the pay. See Iowa Code section 96.5(3)(a); see also Iowa Administrative Code section 871 IAC 24.24(15).

The Iowa Code indicates that for offers of employment that come during the first five weeks of the unemployment insurance claim, the offered pay will be deemed suitable if it equals or exceeds 100 percent of the average weekly wage during the claimant's highest earning base period quarter. See Iowa Code section 96.5(3)(a)(1)(a).

There is nothing in this record to suggest that the work offered to Mr. DeMoss on August 21, 2012 was unsuitable work. It was full-time, first shift. The wages offered exceeded the average weekly wage from his highest earning base period quarter. Mr. DeMoss's initial, verbal acceptance of the offered work further supports the conclusion that it was suitable work.

The question becomes whether Mr. DeMoss' subsequent *conduct* in failing to appear for the assignment and failing to make further contact with the employer constituted a work refusal. Iowa Administrative Code section 24.24(1) provides as follows:

In deciding whether or not a claimant failed to accept suitable work ... it must first be established that a bonafide offer of work was made to the individual by personal contact ... and a definite refusal was made by the individual.

The evidence indicates a bonafide offer of employment through the August 21, 2012 phone call. Ms. Atkinson shared with Mr. DeMoss the particulars of the proposed assignment. The assignment was his for the taking. The evidence indicates verbal acceptance of the assignment as suitable work, but subsequent contrary conduct. The administrative law judge concludes that Mr. DeMoss' conduct on August 22, 2012 in not appearing for the assignment or making contact with the employer, along with his failure to make further contact with the employer in response to the employer's message, was sufficient under the circumstances to convey a definite refusal of the work assignment. Mr. DeMoss has failed to present any evidence to indicate good cause for refusing, through his actions, to accept the offer of suitable work.

**DECISION:**

The Agency representative's September 11, 2012, reference 01, is reversed. The claimant refused an offer of suitable employment on August 22, 2012 without demonstrating good cause for the refusal. Effective August 22, 2012, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw