

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LEOPOLDO ESTRADA  
222 1/2 MAIN ST APT 1  
COLUMBUS JUNCTION IA 52738

R J PERSONNEL INC  
TEMP ASSOCIATES  
PO BOX 1061  
MUSCATINE IA 52761

Appeal Number: 04A-UI-09955-AT  
OC: 12/14/03 R: 04  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-3a – Refusal of Suitable Work

STATEMENT OF THE CASE:

Temp Associates filed a timely appeal from an unemployment insurance decision dated September 9, 2004, reference 06, which allowed benefits to Leopoldo Estrada upon a finding that no offer of work was actually made to him on August 18, 2004. After due notice was issued, a telephone hearing was held on October 8, 2004 with Mr. Estrada participating with assistance with from interpreter Guadalupe McCarney. Account Manager Angie Brauns participated for the employer.

## FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Leopoldo Estrada was working for Temp Associates on assignment at ACME when he was injured. Dave Collins, the individual who handles workers compensation matters for Temp Associates, did not contact Mr. Estrada about the possibility of light duty work at Goodwill Industries. The light duty work at that location involved sorting clothes, a job Mr. Estrada could have performed.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that Mr. Estrada should be disqualified for benefits for refusing a suitable offer of work. It does not.

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 has the burden of proof. See Iowa Code section 96.6-2. Dave Collins, the person who supposedly contacted Mr. Estrada, was not available to testify. The employer offered no business records or other documentation from Mr. Collins. Ms. Braun's testimony was hearsay. The claimant testified under oath, subject to questioning by the administrative law judge and cross-examination by Ms. Brauns that he had received no contact from Mr. Collins. In light of his sworn testimony, the employer's hearsay does not constitute a preponderance of the evidence establishing a bona fide offer of work. No disqualification may be imposed from the evidence in this record.

DECISION:

The unemployment insurance decision dated September 9, 2004, reference 06, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

kjf/kjf