

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAM E BOUGHNER
Claimant

APPEAL NO. 09A-UI-00518-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUPREME STAFFING INC
Employer

OC: 12/06/07 R: 03
Claimant: Appellant (2)

Section 96.5-3-a – Refusal to Accept Offer of Suitable Work

STATEMENT OF THE CASE:

Sam E. Boughner (claimant) appealed a representative's January 5, 2009 decision (reference 02) that concluded he was not qualified to receive benefits because he refused Supreme Staffing, Inc.'s (employer) November 21, 2008 offer of suitable work without good cause. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2009. The claimant participated in the hearing. Mike Riehl 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;

Was the claimant able to and available for work as of November 24, 2008?

Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of December 16, 2007. He established a claim for **Emergency Unemployment Insurance Compensation (EUC)** during the week of November 2, 2008. The claimant established a new benefit year during the week of December 14, 2008.

The claimant registered to work for the employer's clients. The employer assigned the claimant to a job. At this job assignment, the claimant worked 3:00 a.m. to 11:00 a.m. and earned \$8.50 an hour as a general laborer. This job assignment ended on November 4, 2008.

On November 21, the employer offered the claimant a job that would begin on Monday, November 24. This was long-term assignment and paid \$8.50 an hour. The claimant would be working 40 hours a week, 6:00 a.m. to 2:30 p.m. as a general laborer. This job was 15 miles closer than the claimant indicated he would travel for a job. The claimant declined the job because it started too early.

The claimant had problems getting up in the morning and did not want an early shift. He also wanted to help his wife in the morning with their new baby and two other children. The claimant did not want to leave his wife without a car while he worked.

The claimant continued filing weekly claims for EUC benefits after he declined the job offer.

REASONING AND CONCLUSIONS OF LAW:

First, the benefit year the refusal issue must be decided is December 16, 2007, and not December 14, 2008, as the representative's decision indicates. If the claimant had not established a benefit year during the week of December 16, 2007, the refusal would not make any difference because a refusal must take place within a claimant's benefit year. 871 IAC 24.24(8).

A claimant is not qualified to receive unemployment insurance benefits if he refuses a suitable job without good cause. Iowa Code § 96.5-3-a. In determining whether job offer is suitable the factors that must be considered are the degree of risk involved to a claimant's health, safety, prior training, length of unemployment and prospects for securing local work in the claimant customary occupation **and** the wage offered must equal 100 percent of the claimant average weekly wage since the work was offered was during the first five weeks of the claimant being unemployed again. Iowa Code § 96.5-3-a (1).

Based on the benefit year the claimant established during the week of December 16, 2007, his average weekly wage during his highest quarter is \$665.00. The claimant's average weekly wage for the benefit year established during the week of December 14, 2008, is \$238.00. Since the offer was made during the claimant's 2007 benefit year, the law requires suitable employment to pay \$665.00 a week instead of the \$360.00 the job would have paid. While this may not appear fair when the claimant had been working for \$8.50 an hour, an administrative law judge has to apply the applicable law. Therefore, based on the wages the job the employer offered on November 21 does not amount to a suitable job. This means, the claimant declined the job offer for reasons that do not disqualify him from receiving benefits. He remains qualified to receive benefits.

DECISION:

The representative's January 5, 2009 decision (reference 02) is reversed. The November 21, 2008 offer of work does not meet the wage requirements of the applicable law. Therefore, the claimant remains qualified to receive benefits as of November 21, 2008, even though he refused an offer of work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css